

FEDERAL REGISTER

THE NATIONAL ARCHIVES
LITTERA SCRIPTA MANET
1934
OF THE UNITED STATES

VOLUME 27 NUMBER 24

Washington, Saturday, February 3, 1962

Contents

Agricultural Marketing Service

PROPOSED RULE MAKING:

Onions grown in South Texas; decision with respect to proposed amendments to marketing agreement and order; and referendum order..... 1012

RULES AND REGULATIONS:

Carrots grown in South Texas; limitation of shipments..... 1007

Lemons grown in California and Arizona; handling limitations (2 documents)..... 1007

Navel oranges grown in Arizona and designated part of California; handling limitation..... 1006

Oranges, grapefruit, tangerines, and tangelos grown in Florida; limitation of shipments (4 documents)..... 1004-1006

Agricultural Stabilization and Conservation Service

PROPOSED RULE MAKING:

Milk in Louisville-Lexington, Ky., and Ohio Valley marketing areas; recommended decision and opportunity to file written exceptions on proposed amendments to tentative marketing agreements and orders..... 1013

RULES AND REGULATIONS:

Milk; orders amending orders in certain marketing areas:

Austin-Waco (see Part II of this issue).

San Antonio, Texas (see Part II of this issue).

Texas Panhandle (see Part II of this issue).

Agriculture Department

See Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Federal Crop Insurance Corporation.

Atomic Energy Commission

NOTICES:

Consolidated Edison Company of New York, Inc.; notice of extension of completion date..... 1037

United Nuclear Corp.; notice of issuance of facility license amendment..... 1037

Civil Service Commission

RULES AND REGULATIONS:

Exceptions from competitive service:

Justice Department..... 1001

Small Business Administration..... 1001

State Department..... 1001

Federal Aviation Agency

PROPOSED RULE MAKING:

Control zones; designations (2 documents)..... 1033, 1034

Designation of restricted area and alteration of Federal airway..... 1033

Federal airway, associated control areas, and reporting points; revocation..... 1033

Jet advisory areas; designations (3 documents)..... 1034, 1035

Restricted area; alteration..... 1035

RULES AND REGULATIONS:

Facilitation of experiments with exterior lighting systems..... 1008

Federal airway; alteration..... 1009

Navion, Navion A, B, D, E, F, and G aircraft; airworthiness directive..... 1009

Federal Crop Insurance Corporation

RULES AND REGULATIONS:

Federal crop insurance:

Barley..... 1002

Potatoes..... 1001

Wheat..... 1003

Federal Trade Commission

RULES AND REGULATIONS:

Lewis Apparel Stores, Inc., et al.; prohibited trade practices..... 1009

Food and Drug Administration

RULES AND REGULATIONS:

Potassium permanganate preparations as prescription drugs..... 1009

Sodium 2,2-dichloropropionate; tolerance for residues..... 1010

General Services Administration

NOTICES:

Secretary of Commerce; authority to establish special police force for protection of Maritime Administration installations..... 1037

Health, Education, and Welfare Department

See Food and Drug Administration.

Interior Department

See Land Management Bureau.

International Development Agency

NOTICES:

Certain officers to act as Administrator; designation..... 1037

Interstate Commerce Commission

NOTICES:

Midland Valley Railroad Co.; diversion or rerouting of traffic.. 1038

Land Management Bureau

RULES AND REGULATIONS:

Montana; public land order; Reservoir Site Restoration No. 26-A; revoking Reservoir Site Reserve No. 5..... 1011

Post Office Department

RULES AND REGULATIONS:

Information on postal matters; directory of international mail; miscellaneous amendments..... 1010

State Department

See also International Development Agency.

RULES AND REGULATIONS:

Foreign service officers; appointment; requirement for examinees..... 1010

(Continued on next page)

Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

5 CFR

6 (3 documents) ----- 1001

7 CFR

401 (3 documents) ----- 1001-1003
905 (4 documents) ----- 1004-1006
907 ----- 1006
910 (2 documents) ----- 1007
970 ----- 1007
1127 ----- 1040
1129 ----- 1047
1132 ----- 1054

PROPOSED RULES:

959 ----- 1012
1046 ----- 1013
1095 ----- 1013

14 CFR

3 ----- 1008
4b ----- 1008
6 ----- 1008
7 ----- 1008
40 ----- 1008
41 ----- 1008
42 ----- 1008
43 ----- 1008
507 ----- 1009
600 ----- 1009

PROPOSED RULES:

600 (2 documents) ----- 1033
601 (3 documents) ----- 1033, 1034
602 (3 documents) ----- 1034, 1035
608 (2 documents) ----- 1033, 1035

16 CFR

13 ----- 1009

21 CFR

3 ----- 1009
120 ----- 1010

22 CFR

11 ----- 1010

39 CFR

4 ----- 1010
168 ----- 1010

43 CFR

PUBLIC LAND ORDERS:

2600 ----- 1011

Now Available

CFR SUPPLEMENTS

(As of January 1, 1962)

The following Supplements are now available:

Title 26 (Parts 30-39) ----- \$0.30

Title 46 (Parts 146-149)

1961 Supplement 2 ----- 1.25

Order from Superintendent of Documents,
Government Printing Office, Washington
25, D.C.



Telephone

WOrth 3-3261

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Office of the Federal Register, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for \$1.50 per month or \$15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D.C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Department of State

Effective upon publication in the FEDERAL REGISTER, subparagraph (6) is added to paragraph (k) of § 6.302 as set out below.

§ 6.302 Department of State.

- * * * * *
- (k) Bureau of Far Eastern Affairs.
- * * *
- (6) One Staff Assistant.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] MARY V. WENZEL,
Executive Assistant to
the Commissioners.

[F.R. Doc. 62-1156; Filed, Feb. 2, 1962; 8:47 a.m.]

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Department of Justice

Effective upon publication in the FEDERAL REGISTER, subparagraphs (8) and (13) of paragraphs (e) and subparagraphs (4), (5), and (7) of paragraph (i) of § 6.308 are revoked.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] MARY V. WENZEL,
Executive Assistant to
the Commissioners.

[F.R. Doc. 62-1166; Filed, Feb. 2, 1962; 8:49 a.m.]

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Small Business Administration

Effective upon publication in the FEDERAL REGISTER, paragraph (x) is added to § 6.328 as set out below.

§ 6.328 Small Business Administration.

- * * * * *
- (x) One Assistant to the Special Assistant to the Administrator.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] MARY V. WENZEL,
Executive Assistant to
the Commissioners.

[F.R. Doc. 62-1155; Filed, Feb. 2, 1962; 8:47 a.m.]

Title 7—AGRICULTURE

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture

[Amdt. 28]

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1961 and Succeeding Crop Years

POTATOES

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended, the above-identified regulations are amended effective beginning with the 1962 crop year for potatoes in the following respects:

§ 401.3 [Amendment]

1. The table following paragraph (a) of § 401.3 of this chapter is amended effective beginning with the 1962 crop year for potatoes by adding the following insertion immediately below that portion of the table showing a closing date for peanuts:

Potatoes----- May 15

2. The following section is added:

§ 401.37 The potato endorsement.

The provisions of the potato endorsement for the 1962 and succeeding crop years are as follows:

1. *Causes of loss insured against.* The insurance provided is against unavoidable loss of production due to wildlife, insect infestation, plant disease, earthquake, drought, flood, hail, wind, frost, freeze, lightning, fire, excessive rain, snow, hurricane, tornado and any other unavoidable causes of loss due to adverse weather conditions, subject, however, to any exceptions, exclusions or limitations with respect to such causes of loss that are set forth on the county actuarial table.

2. *Insured crop.* The insured crop shall be potatoes of the variety shown on the county actuarial table as insurable. Insurance shall not attach on any insurance unit on which the planted acreage is less than two acres.

3. *Production guarantee and price.* (a) The provisions of section 3 of the policy with respect to guaranteed production and amounts of insurance per acre shall not be applicable under this endorsement. For each crop year of the contract the production guarantee, and the price at which indemnities shall be computed shall be those established by the Corporation and shown on the county actuarial table.

(b) At the time the application for insurance is made the applicant shall elect the price at which indemnities shall be computed from among those shown on the county actuarial table. If such applicant fails to make an election or elects a price not shown on the actuarial table the price which shall be in effect shall be the amount provided on the county actuarial table for such purposes. As to any succeeding crop year any insured may change the price which was in effect for a prior crop year and make a new election by notifying the county office in writing of such election be-

fore contracts are terminated for indebtedness for the crop year for which the election is to become effective. If no such change is made the price at which indemnities shall be computed shall be the price most recently in force but shall not exceed the maximum price as shown on the county actuarial table.

4. *Insurance period.* Insurance on any insured acreage shall attach at the time the potatoes are planted and shall cease upon the earlier of harvest or October 20 of the crop year.

5. *Claims for loss.* (a) In lieu of subsection 11(c) of the policy, the following shall apply: Losses shall be determined separately for each insurance unit (hereinafter called "unit"). The amount of loss with respect to any unit shall be determined by (1) multiplying the insured acreage of potatoes on the unit by the applicable production guarantee per acre, which product shall be the production guarantee for the unit, (2) subtracting therefrom the total production to be counted for the unit, (3) multiplying the remainder by the insured interest, and (4) multiplying this result by the applicable price for computing indemnities: *Provided*, That if for the insurance unit the insured fails to report all of his interest or insurable acreage the amount of loss shall be determined with respect to all of his interest and insurable acreage, but in such cases or otherwise, if the premium computed on the basis of the insurable acreage and interest exceeds the premium on the reported acreage and interest, or the acreage and interest when determined by the Corporation under section 2 of this policy, the amount of loss shall be reduced proportionately.

The total production to be counted for an insurance unit shall be determined by the Corporation and shall include all harvested production and any appraisals made by the Corporation for unharvested, or potential production, poor farming practices, uninsured causes of loss, or for acreage abandoned or put to another use without the consent of the Corporation: *Provided*, That the total production to be counted for any acreage not harvested nor considered as harvested within the meaning of the term "harvested" shall be not less than 25 percent of the production guarantee for such acreage: *Provided, further*, That the production to be counted for any acreage of potatoes which is abandoned or put to another use without the consent of the Corporation shall be the production guarantee provided on the county actuarial table for such acreage.

(b) Notwithstanding the provisions of paragraph (a) of this section, if the production to be counted does not meet the quality specifications shown on the county actuarial table due to insurable causes occurring within the insurance period it shall be reduced by the factor for that purpose shown on such actuarial table.

6. *Meaning of terms.* For the purpose of insurance on potatoes the terms: (a) "Insurance unit," notwithstanding section 21(g) of the policy, means the insurable acreage of potatoes in the county in which (1) one person at the time of planting has the entire interest in the crop, or (2) the same two or more persons at the time of planting have the entire interest in the crop: *Provided, however*, The Corporation and the insured may agree in writing before insurance attaches in any crop year to divide the insured's insurable acreage of potatoes in the county into two or more units, taking into consideration separate and distinct farm operations.

(b) "Harvest" or "harvested" means the digging of potatoes. For the purpose of determining any loss under the contract any acreage shall not be considered as harvested unless the Corporation determines that at the time of harvest the production harvested therefrom equals not less than 25 percent of the production guarantee for such acreage.

7. *Cancellation, termination for indebtedness, and discount dates.* (a) For each crop year of the contract the cancellation date shall be the December 31 and the termination date for indebtedness shall be the May 15 immediately preceding the beginning of the crop year for which the cancellation or the termination is to become effective.

(b) For the 1962 crop year only the discount date shall be December 31, 1962.

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516)

Adopted by the Board of Directors on January 22, 1962.

[SEAL] EARLL H. NIKKEL,
Secretary,
Federal Crop Insurance Corporation.

Approved: January 30, 1962.

JAMES T. RALPH,
Assistant Secretary.

[F.R. Doc. 62-1153; Filed, Feb. 2, 1962;
8:47 a.m.]

[Amdt. 30]

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1961 and Succeeding Crop Years

BARLEY

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended, the above-identified regulations are amended effective beginning with the 1963 crop year in the following respects:

1. Subparagraph (1) of paragraph (a) of § 401.3 of this chapter is amended, effective beginning with the 1963 crop year, to read as follows:

§ 401.3 Application for insurance.

(a) * * *

(1) In all counties in Oregon and Washington, in any county in Idaho with an October 31 closing date, and in any county in Colorado with an August 31 closing date, in which barley is an insurable crop, an application for insurance on barley may be filed until the March 31 following the closing date, provided that in such cases winter barley will not be insured for the first barley crop year of the contract.

2. The portion of the table following paragraph (a) of § 401.3 of this chapter under the heading "Barley" is amended effective beginning with the 1963 crop year by inserting the following immediately below the line pertaining to "California":

(Closing Date)

BARLEY

Colorado:	
Logan, Phillips and Sedgwick Counties.....	Aug. 31
All other Colorado Counties.....	Mar. 31

3. The Barley endorsement, published in § 401.17 of this chapter, is amended

effective beginning with the 1963 crop year to read as follows:

§ 401.17 The barley endorsement.

The provisions of the barley endorsement for the 1963 and succeeding crop years are as follows:

1. *Causes of loss insured against.* The insurance provided is against unavoidable loss of production due to wildlife, insect infestation, plant disease, earthquake, drought, flood, hail, wind, frost, freeze, winter-kill, lightning, fire, excessive rain, snow, hurricane, tornado, and any other unavoidable cause of loss due to adverse weather conditions, subject however, to any exceptions, exclusions or limitations with respect to such causes of loss that are set forth in the county actuarial table.

2. *Insured crop.* Insurance shall not attach on acreage on which it is determined by the Corporation that barley is (a) seeded with flax or other small grains or vetch, or (b) not seeded for harvest as grain as determined by the Corporation.

3. *Bushel guarantee, and price per bushel.* (a) The provisions of section 3 of the policy with respect to guaranteed production and amounts of insurance per acre shall not be applicable under this endorsement. For each crop year of the contract the bushel guarantee, and the price at which indemnities shall be computed shall be those established by the Corporation and shown on the county actuarial table.

(b) The bushel guarantee per acre shown on the county actuarial table shall be increased by two bushels for any harvested acreage on which the amount harvested is two or more bushels per acre.

At the time the application for insurance is made the applicant shall elect a price per bushel at which indemnities shall be computed from among those shown on the county actuarial table. Any insured with a contract in force prior to the 1963 crop year may elect the price per bushel to be in effect beginning with the 1963 crop year. If any applicant or insured fails to make an election or elects a price per bushel not shown on the actuarial table the price per bushel which shall be in effect shall be the amount provided on the county actuarial table for such purposes.

As to any succeeding crop year any insured may change the price per bushel which was in effect for a prior crop year and make a new election by notifying the county office in writing of such election before contracts are terminated for indebtedness for the crop year for which the election is to become effective. If no such change is made, the price per bushel at which indemnities shall be computed shall be the price most recently in force under the contract but for any crop year shall not exceed the maximum price per bushel as shown on the county actuarial table.

4. *Insurance period.* Insurance on any insured acreage shall attach at the time the barley is seeded and shall cease upon threshing or removal from the field, whichever occurs first, but in no event shall insurance remain in effect later than October 31 of the calendar year in which the barley is normally harvested.

5. *Claims for loss.* (a) In lieu of subsection 11(c) of the policy, the following shall apply: Losses shall be determined separately for each insurance unit (hereafter called "unit"). The amount of loss with respect to any unit shall be determined by (1) multiplying the insured acreage of barley on the insurance unit by the applicable bushel guarantee per acre, which product shall be the bushel guarantee for the unit, (2) subtracting therefrom the total production to be counted for the unit, (3) multiplying the remainder by the insured interest, and (4)

multiplying this result by the applicable price per bushel for computing indemnities: *Provided*, That if for the insurance unit the insured fails to report all of his interest or insurable acreage the amount of loss shall be determined with respect to all of his interest and insurable acreage, but in such cases or otherwise, if the premium computed on the basis of the insurable acreage and interest exceeds the premium on the reported acreage and interest, or the acreage and interest when determined by the Corporation under section 2 of the policy, the amount of loss shall be reduced proportionately.

The total production to be counted for a unit shall be determined by the Corporation and, subject to the provisions hereinafter, shall include all threshed production and any appraisals made by the Corporation for unthreshed, unharvested, or potential production, poor farming practices, uninsured causes of loss, or for acreage abandoned or put to another use without the consent of the Corporation: *Provided*, That the production to be counted on any acreage of barley which, with the consent of the Corporation, is planted in the current crop year, before harvest becomes general, to any other crop insured under the regulations of the Corporation, shall be 50 percent of the bushel guarantee for such acreage or the appraised production whichever is greater: *Provided*, That on any acreage from which less than two bushels per acre are harvested, the total production to be counted under the provision of this section shall be that amount in excess of two bushels per acre, except that the production to be counted for any acreage of barley which is abandoned or put to another use without the consent of the Corporation shall be the bushel guarantee provided on the county actuarial table.

(b) The total production to be counted shall include any harvested production from acreage initially seeded for purposes other than for harvest as grain as determined by the Corporation.

(c) In determining total production volunteer small grains and volunteer vetch growing with the seeded barley crop, and small grains seeded in the growing barley crop on acreage on which the Corporation has not given its consent to be put to another use shall be counted as barley on a weight basis.

(d) Notwithstanding the provisions of paragraph (a) of this section for determining production to be counted, the production to be counted of any threshed barley which does not grade No. 4 or better (determined in accordance with Official Grain Standards of the United States), because of poor quality due to insurable causes occurring within the insurance period and would not meet this grade requirement if properly handled, shall be adjusted by (1) dividing the value per bushel of the damaged barley as determined by the Corporation, by the market price per bushel at the local market for barley grading No. 4, at the time the loss is adjusted, and (2) multiplying the result thus obtained by the number of bushels of such damaged barley.

6. *Meaning of Terms.* For the purpose of insurance on barley the terms:

(a) "Insurance unit," notwithstanding section 21(g) of the policy, means the insurable acreage of barley in the county in which (1) one person at the time of planting has the entire interest in the crop, or (2) the same two or more persons at the time of planting have the entire interest in the crop: *Provided, however*, The Corporation and the insured may agree in writing before insurance attaches in any crop year to divide the insured's insurable acreage of barley in the county into two or more units, taking into consideration separate and distinct farm operations.

(b) "Harvest" means the mechanical severance from the land of matured barley for threshing.

7. *Cancellation and termination for indebtedness dates.* For each year of the contract the cancellation date and the termination date for indebtedness are the following applicable dates immediately preceding the beginning of the crop year for which the cancellation or the termination is to become effective: *Provided, however,* That for the purposes of determining the applicable cancellation and termination dates only, and notwithstanding section 21(e) of the policy, the crop year for spring planted barley insured in all counties with a March 15 cancellation date shall be considered to mean that period in which the winter barley crop in such counties is normally planted and normally harvested, and shall be designated by reference to the calendar year in which the crop is normally harvested.

State and county	Cancellation date	Termination date for indebtedness
California.....	Mar. 15	Aug. 31
Colorado:		
Logan, Phillips, and Sedgwick Counties.....	do	Do.
All other Colorado counties.....	Dec. 31	Mar. 31
Idaho:		
Idaho County and all Idaho counties lying north thereof.....	Mar. 15	Oct. 31
All other Idaho counties.....	Dec. 31	Mar. 31
Maryland and Pennsylvania.....	Mar. 15	Sept. 15
Oregon and Washington.....	do	Oct. 31
All other States.....	Dec. 31	Mar. 31

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516)

Adopted by the Board of Directors on January 22, 1962.

[SEAL] EARLL H. NIKKEL,
Secretary,
Federal Crop Insurance Corporation.

Approved: January 30, 1962.

JAMES T. RALPH,
Assistant Secretary.

[F.R. Doc. 62-1152; Filed, Feb. 2, 1962;
8:47 a.m.]

[Amdt. 29]

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1961 and Succeeding Crop Years

WHEAT

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended, the above-identified regulations are amended effective beginning with the 1963 crop year in the following respects:

1. That portion of subparagraph (2) preceding the first colon of paragraph (a) of § 401.3 of this chapter is amended, effective beginning with the 1963 crop year, to read as follows:

§ 401.3 Application for insurance.

(a) * * *

(2) In counties where wheat is an insurable crop an application for insurance on wheat may be filed until the March 31 following the closing date in all counties in Montana, in any county in North Dakota and South Dakota in

which insurance is not limited to spring wheat only on the county actuarial table, in Linn and Malheur Counties, Oregon, and in Bonneville, Cassia, Fremont, and Madison Counties, Idaho, but in any such case for the first wheat crop year of the contract, winter wheat in all of such counties and spring wheat planted on land which is non-irrigated in Bonneville, Cassia, Fremont and Madison Counties, Idaho, will not be insured:

2. The portion of the table following paragraph (a) of § 401.3 of this chapter under the heading "Wheat" is amended effective beginning with the 1963 crop year to read as follows:

(Closing Dates)

WHEAT

California, Colorado, Kansas, Montana, Nebraska, New Mexico, Oklahoma, Texas, and Wyoming.....	Aug. 31
Idaho:	
Idaho County and all Idaho counties lying north thereof.....	Oct. 31
All Idaho counties lying south of Idaho County, except Bingham, Gooding, Jerome, Lincoln, Minidoka and Twin Falls Counties.....	Sept. 15
Bingham, Gooding, Jerome, Lincoln, Minidoka, and Twin Falls Counties.....	Mar. 31
Minnesota and North Dakota.....	Mar. 31
North Carolina, Kentucky, Tennessee and South Carolina.....	Oct. 15
Oregon and Washington.....	Oct. 31
South Dakota:	
Bennett, Faulk, Hand, Jones, Lyman, Mellette, Potter, Sully, and Tripp Counties.....	Aug. 31
All other South Dakota Counties.....	Mar. 31
All other States.....	Sept. 15

3. The wheat endorsement, published in § 401.32 of this chapter, is amended effective beginning with the 1963 crop year to read as follows:

§ 401.32 The wheat endorsement.

The provisions of the wheat endorsement for the 1963 and succeeding crop years are as follows:

1. *Causes of loss insured against.* The insurance provided is against unavoidable loss of production due to wildlife, insect infestation, plant disease, earthquake, drought, flood, hail, wind, frost, freeze, winter-kill, lightning, fire, excessive rain, snow, hurricane, tornado, and any other unavoidable cause of loss due to adverse weather conditions, subject however, to any exceptions, exclusions or limitations with respect to such causes of loss that are set forth in the county actuarial table.

2. *Insured crop.* Insurance shall not attach on acreage on which it is determined by the Corporation that wheat is (a) seeded with flax or other small grains, vetch, Austrian winter peas, or dry edible peas, or (b) not seeded for harvest as grain as determined by the Corporation.

3. *Annual premium.* (a) There will be a reduction in the annual wheat premium for each insurance unit of 4 percent for the first full 200 acres of insured wheat acreage on the unit and an additional 2 percent reduction for each additional full 100 acres: *Provided, however,* That the total reduction shall not exceed 20 percent.

(b) Whether or not the insured is eligible for the reduction provided in section 4(b) of the policy, the insured's annual wheat premium may be reduced in lieu thereof for any year by not to exceed 50 percent if it is determined by the Corporation that the accumulated balance (expressed in bushels) of premiums over indemnities on consecutively

insured wheat crops preceding the current crop year equals or exceeds his total bushel guarantee based on the amount per acre shown on the county actuarial table.

4. Bushel guarantee and price per bushel.

(a) The provisions of section 3 of the policy with respect to guaranteed production and amounts of insurance per acre shall not be applicable under this endorsement. For each crop year of the contract the bushel guarantee, and the price at which indemnities shall be computed shall be those established by the Corporation and shown on the county actuarial table.

(b) The bushel guarantee per acre shown on the county actuarial table shall be increased by one and one-half bushels for any harvested acreage on which the amount harvested is one and one-half or more bushels per acre.

At the time the application for insurance is made the applicant shall elect a price per bushel at which indemnities shall be computed from among those shown on the county actuarial table. Any insured with a contract in force prior to the 1963 crop year may elect the price per bushel to be in effect beginning with the 1963 crop year. If any applicant or insured fails to make an election or elects a price per bushel not shown on the actuarial table, the price per bushel which shall be in effect shall be the amount provided on the county actuarial table for such purposes.

As to any succeeding crop year any insured may change the price per bushel which was in effect for a prior crop year and make a new election by notifying the county office in writing of such election before contracts are terminated for indebtedness for the crop year for which the election is to become effective. If no such change is made, the price per bushel at which indemnities shall be computed shall be the price most recently in force under the contract but for any crop year shall not exceed the maximum price per bushel as shown on the county actuarial table.

5. *Insurance period.* Insurance on any insured acreage shall attach at the time the wheat is seeded and shall cease upon threshing or removal from the field, whichever occurs first, but in no event shall insurance remain in effect later than October 31 of the calendar year in which the wheat is normally harvested.

6. *Claims for loss.* (a) In lieu of subsection 11(c) of the policy, the following shall apply: Losses shall be determined separately for each insurance unit (hereafter called "unit"). The amount of loss with respect to any unit shall be determined by (1) multiplying the insured acreage of wheat on the unit by the applicable bushel guarantee per acre, which product shall be the bushel guarantee for the unit, (2) subtracting therefrom the total production to be counted for the unit, (3) multiplying the remainder by the insured interest, and (4) multiplying this result by the applicable price per bushel for computing indemnities: *Provided,* That if for the insurance unit the insured fails to report all of his interest or insurable acreage the amount of loss shall be determined with respect to all of his interest and insurable acreage, but in such cases or otherwise, if the premium computed on the basis of the insurable acreage and interest exceeds the premium on the reported acreage and interest, or the acreage and interest when determined by the Corporation under section 2 of the policy, the amount of loss shall be reduced proportionately.

The total production to be counted for a unit shall be determined by the Corporation and, subject to the provisions hereinafter, shall include all threshed production and any appraisals made by the Corporation for unthreshed, unharvested, or potential production, poor farming practices, uninsured causes of loss, or for acreage abandoned or

put to another use without the consent of the Corporation: *Provided*, That the production to be counted on any acreage of wheat which, with the consent of the Corporation, is planted in the current crop year, before harvest becomes general, to any other crop insured under the regulations of the Corporation, shall be 50 percent of the bushel guarantee for such acreage or the appraised production whichever is greater: *Provided*, That on any acreage from which less than one and one-half bushels per acre are harvested, the total production to be counted under the provision of this section shall be that amount in excess of one and one-half bushels per acre, except that the production to be counted for any acreage of wheat which is abandoned or put to another use without the consent of the Corporation shall be the bushel guarantee provided on the county actuarial table.

(b) The total production to be counted shall include any harvested production from acreage initially seeded for purposes other than for harvest as grain as determined by the Corporation.

(c) In determining total production volunteer small grains, volunteer Austrian winter peas, volunteer dry edible peas, and volunteer vetch growing with the seeded wheat crop, and small grains seeded in the growing wheat crop on acreage on which the Corporation has not given its consent to be put to another use, shall be counted as wheat on a weight basis.

(d) Notwithstanding the provisions of paragraph (a) of this section for determining production to be counted, the production to be counted of any threshed wheat which does not grade No. 3 or better, and in addition, does not grade No. 4 or 5 on the basis of test weight only but otherwise grades No. 3 or better (determined in accordance with Official Grain Standards of the United States) because of poor quality due to insurable causes occurring within the insurance period and would not meet these grade requirements if properly handled, shall be adjusted by (1) dividing the value per bushel of the damaged wheat as determined by the Corporation, by the market price per bushel at the local market at the time the loss is adjusted for wheat grading No. 3, and (2) multiplying the result thus obtained by the number of bushels of such damaged wheat.

7. *Meaning of terms.* For purposes of insurance on wheat the terms:

(a) "Insurance unit," notwithstanding section 21(g) of the policy, means the insurable acreage of wheat in the county in which (1) one person at the time of planting has the entire interest in the crop, or (2) the same two or more persons at the time of planting have the entire interest in the crop: *Provided, however*, The Corporation and the insured may agree in writing before insurance attaches in any crop year to divide the insured's insurable acreage of wheat in the county into two or more units, taking into consideration separate and distinct farm operations.

(b) "Harvest" means the mechanical severance from the land of matured wheat for threshing.

8. *Cancellation and termination for indebtedness dates.* For each year of the contract the cancellation date and termination date for indebtedness are the following applicable dates immediately preceding the beginning of the crop year for which the cancellation or the termination is to become effective: *Provided, however*, That for purposes of determining the applicable cancellation and termination dates only, and notwithstanding section 21(e) of the policy, the crop year for spring planted wheat insured in all counties with a March 15 cancellation date shall be considered to mean that period in which the winter wheat crop in such counties is normally planted and normally harvested, and shall be designated by refer-

ence to the calendar year in which the crop is normally harvested: *And provided, further*, That in any county in Montana and any county in North Dakota and South Dakota in which insurance is not limited to spring wheat only on the county actuarial table, an insured may cancel his wheat crop insurance contract applicable to any such county for any crop year any time prior to the December 31 following the cancellation date for that crop year if he does not have an interest in any winter wheat crop seeded for harvest in such county in that crop year, as determined by the Corporation.

State and county	Cancellation date	Termination date for indebtedness
California, Colorado, Kansas, Montana, Nebraska, New Mexico, Oklahoma, Texas, and Wyoming.	Mar. 15	Aug. 31
Idaho: Idaho County and all Idaho counties lying north thereof.	do....	Oct. 31
All Idaho counties lying south of Idaho County except Bingham, Gooding, Jerome, Lincoln, Minidoka, and Twin Falls Counties.	do....	Sept. 15
Bingham, Gooding, Jerome, Lincoln, Minidoka, and Twin Falls Counties.	Dec. 31	Mar. 31
Minnesota and North Dakota.	do....	Mar. 31
North Carolina, Kentucky, Tennessee, and South Carolina.	Mar. 15	Oct. 15
Oregon and Washington.	do....	Oct. 31
South Dakota: Bennett, Faulk, Hand, Jones, Lyman, Mellette, Potter, Sully, and Tripp Counties.	do....	Aug. 31
All other South Dakota counties.	Dec. 31	Mar. 31
All other States.	Mar. 15	Sept. 15

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516)

Adopted by the Board of Directors on January 22, 1962.

[SEAL] EARLL H. NIKKEL,
Secretary,
Federal Crop Insurance Corporation.

Approved: January 30, 1962.

JAMES T. RALPH,
Assistant Secretary.

[F.R. Doc. 62-1154; Filed, Feb. 2, 1962; 8:47 a.m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Orange Reg. 3]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

§ 905.309 Orange Regulation 3.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of oranges, including

Temple oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of oranges, including Temple oranges, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on January 30, 1962, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of oranges, including Temple oranges, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Oranges and Tangelos (§§ 51.1140-51.1178 of this title; 25 F.R. 8211).

(2) During the period beginning at 12:01 a.m., e.s.t., February 5, 1962, and ending at 12:01 a.m., e.s.t., February 19, 1962, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any oranges, including Temple oranges, grown in the production area, which do not grade at least U.S. No. 1 Russet;

(ii) Any oranges, except Temple oranges, grown in the production area,

which are of a size smaller than $2\frac{3}{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of oranges smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in said United States Standards for Florida Oranges and Tangelos: *Provided*, That in determining the percentage of oranges in any lot which are smaller than $2\frac{3}{16}$ inches in diameter, such percentage shall be based only on those oranges in such lot which are of a size $2\frac{1}{16}$ inches in diameter or smaller; or

(iii) Any Temple oranges, grown in the production area, which are of a size smaller than $2\frac{3}{16}$ inches in diameter, except that a tolerance of ten percent, by count, of Temple oranges smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in the aforesaid United States Standards for Florida Oranges and Tangelos.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: February 1, 1962.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 62-1188; Filed, Feb. 2, 1962; 8:49 a.m.]

[Grapefruit Reg. 3]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

§ 905.310 Grapefruit Regulation 3.

(a) *Findings*. (1) Pursuant to the marketing agreement, as amended, and Order No. 905 as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause

exists for making the provisions hereof effective as hereinafter set forth. Shipments of all grapefruit, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on January 30, 1962, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of grapefruit, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order*. (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Grapefruit (§§ 51.750-51.783 of this title; 26 F.R. 163).

(2) During the period beginning at 12:01 a.m., e.s.t., February 5, 1962, and ending at 12:01 a.m., e.s.t., February 19, 1962, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any grapefruit, grown in the production area, which do not grade at least U.S. No. 1: *Provided*, That such grapefruit may have discoloration to the extent permitted under the U.S. No. 2 Russet grade, and may have slightly rough texture caused only by speck type melanose;

(ii) Any seeded grapefruit, grown in the production area, which are smaller than $3\frac{1}{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of seeded grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in said United States Standards for Florida Grapefruit; or

(iii) Any seedless grapefruit, grown in the production area, which are smaller than $3\frac{1}{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of seedless grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application

of tolerances, specified in said United States Standards for Florida Grapefruit.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: February 1, 1962.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 62-1187; Filed, Feb. 2, 1962; 8:49 a.m.]

[Tangerine Reg. 3]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

§ 905.311 Tangerine Regulation 3.

(a) *Findings*. (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of tangerines, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on January 30, 1962, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such tangerines; it is necessary, in order to effectuate the de-

[Navel Orange Reg. 5]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 907.305 Navel Orange Regulation 5.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act by tending to establish and maintain such orderly marketing conditions for such oranges as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices, and is not for the purpose of maintaining prices to farmers above the level which it is declared to be the policy of Congress to establish under the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require

clared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of tangerines, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, and standard pack, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Tangerines (§§ 51.1810-51.1834 of this title; 25 F.R. 8216).

(2) During the period beginning at 12:01 a.m., e.s.t., February 5, 1962, and ending at 12:01 a.m., e.s.t., July 31, 1962, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any tangerines, grown in the production area, that do not grade at least U.S. No. 2 Russet; or

(ii) Any tangerines, grown in the production area, that are of a size smaller than the size that will pack 246 tangerines, packed in accordance with the requirements of a standard pack, in a half-standard box (inside dimensions 9½ x 9½ x 19½ inches; capacity 1,726 cubic inches).

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: February 1, 1962.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 62-1190; Filed, Feb. 2, 1962; 8:49 a.m.]

[Tangelo Reg. 3]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

§ 905.312 Tangelo Regulation 3.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of tangelos, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure,

and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of tangelos, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on January 30, 1962, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such tangelos; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of tangelos, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Oranges and Tangelos (§§ 51.1140-51.1178 of this title; 25 F.R. 8211).

(2) During the period beginning at 12:01 a.m., e.s.t., February 5, 1962, and ending at 12:01 a.m., e.s.t., July 31, 1962, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any tangelos, grown in the production area, which do not grade at least U.S. No. 2 Russet.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: February 1, 1962.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 62-1189; Filed, Feb. 2, 1962; 8:49 a.m.]

any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on February 1, 1962.

(b) *Order.* (1) The respective quantities of navel oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a.m., P.s.t., February 4, 1962, and ending at 12:01 a.m., P.s.t., February 11, 1962, are hereby fixed as follows:

- (i) District 1: 225,000 cartons;
- (ii) District 2: 375,000 cartons;
- (iii) District 3: Unlimited movement;
- (iv) District 4: Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: February 1, 1962.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 62-1221; Filed, Feb. 2, 1962; 11:36 a.m.]

[Lemon Reg. 5]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.305 Lemon Regulation 5.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011), because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested

persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on January 30, 1962.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a.m., P.s.t., February 4, 1962, and ending at 12:01 a.m., P.s.t., February 11, 1962, are hereby fixed as follows:

- (i) District 1: 9,300 cartons;
- (ii) District 2: 186,000 cartons;
- (iii) District 3: Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: January 31, 1962.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 62-1169; Filed, Feb. 2, 1962; 8:48 a.m.]

[Lemon Reg. 6]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.306 Lemon Regulation 6.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication

hereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011), because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on January 30, 1962.

(b) *Order.* (1) During the period beginning at 12:01 a.m., P.s.t., February 4, 1962, and ending at 12:01 a.m., P.s.t., June 3, 1962, no handler shall handle any lemons, grown in District 1, District 2, or District 3, which are of a size smaller than 2.03 inches in diameter, which shall be the largest measurement at right angles to a straight line running from the stem to the blossom end of the fruit: *Provided*, That not to exceed 5 percent, by count, of the lemons in any type of container may measure less than 2.03 inches in diameter.

(2) As used in this section, "handle," "handler," "District 1," "District 2," and "District 3" shall have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: February 1, 1962.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 62-1191; Filed, Feb. 2, 1962; 8:50 a.m.]

[970.302, Amdt. 2]

PART 970—CARROTS GROWN IN SOUTH TEXAS

Limitation of Shipments

Findings. (a) Pursuant to Marketing Agreement No. 142 and Order No. 970 (7 CFR Part 970), regulating the handling of carrots grown in designated counties

in South Texas, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674), and upon the basis of the recommendation and information submitted by the South Texas Carrot Committee, established pursuant to said marketing agreement and order, and upon other available information, it is hereby found that the amendment to the limitation of shipments hereinafter set forth will tend to effectuate the declared policy of the act.

(b) It is hereby found that it is impracticable and contrary to the public interest to give preliminary notice, or engage in public rule making procedure, and that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 1001-1011) in that (1) the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, (2) more orderly marketing in the public interest than would otherwise prevail, will be promoted by regulating the handling of carrots in the manner set forth below, on and after the effective date of this amendment, (3) compliance with this amendment will not require any special preparation on the part of handlers which cannot be completed by the effective date, (4) reasonable time is permitted under the circumstances, for such preparation, (5) information regarding the committee's recommendation has been made available to producers and handlers in the production area, and (6) this amendment relieves restrictions on the handling of carrots grown in the production area.

Order, as amended. In § 970.302 (26 F.R. 10124, 27 F.R. 335) delete paragraph (b), and in lieu thereof substitute new paragraph (b), as set forth below.

§ 970.302 Limitation of shipments.

* * * * *

(b) *Sizing requirements*—(1) *Medium-to-large.* $1\frac{1}{16}$ inch minimum diameter to $1\frac{1}{2}$ inches maximum diameter, $5\frac{1}{2}$ inches minimum length;

(2) *Jumbos.* 1 inch minimum diameter to 3 inches maximum diameter and $5\frac{1}{2}$ inches minimum length.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Effective date. February 1, 1962, to become effective February 3, 1962.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 62-1204; Filed, Feb. 2, 1962; 8:50 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Reg. Docket No. 1010; Reg. SR-392C]

PART 3—AIRPLANE AIRWORTHINESS; NORMAL, UTILITY, AND AEROBATIC CATEGORIES

PART 4b—AIRPLANE AIRWORTHINESS; TRANSPORT CATEGORIES

PART 6—ROTOCRAFT AIRWORTHINESS; NORMAL CATEGORY

PART 7—ROTOCRAFT AIRWORTHINESS; TRANSPORT CATEGORIES

PART 40—SCHEDULED INTERSTATE AIR CARRIER CERTIFICATION AND OPERATION RULES

PART 41—CERTIFICATION AND OPERATION RULES FOR SCHEDULED AIR CARRIER OPERATIONS OUTSIDE THE CONTINENTAL LIMITS OF THE UNITED STATES

PART 42—IRREGULAR AIR CARRIERS AND OFF-ROUTE RULES

PART 43—GENERAL OPERATION RULES

Special Civil Air Regulation; Facilitation of Experiments With Exterior Lighting Systems

Special Civil Air Regulation No. SR-392B, adopted on February 25, 1957, permits experimentation with exterior lighting systems, which do not comply with the standards prescribed in the Civil Air Regulations, on aircraft with standard airworthiness certificates. Several conditions are imposed to insure that the number of aircraft engaged in the experiments is reasonably limited; that the experimental exterior lights are in fact installed for bona fide experimentation; and that the results of such experimentation become generally available. This special regulation expires on February 25, 1962.

In a notice of proposed rule making contained in Draft Release No. 61-27 and published in the FEDERAL REGISTER, December 23, 1961 (26 F.R. 12294), the Agency gave notice that it has under consideration the termination of SR-392B and requested comments from interested persons concerning this matter. In response to such request, the Agency has received numerous reports, argu-

ments and other evidence. However, the volume of the comments received is such that there is not sufficient time remaining to review and evaluate such comments prior to the termination of SR-392B. Therefore, in order to afford the Agency the opportunity to fully consider all the relevant matter presented and to take whatever additional rule making action that may be indicated, it is necessary to extend the termination date of SR-392B to June 25, 1962.

Since this regulation continues in effect the provisions of the previous regulation and imposes no additional burden upon any person, compliance with the notice and public procedure provisions of the Administrative Procedure Act is unnecessary and good cause exists for making this regulation effective on less than 30 days' notice.

In consideration of the foregoing, the following Special Civil Air Regulation is adopted to become effective on February 3, 1962:

Contrary provisions of the Civil Air Regulations notwithstanding, experimental exterior lighting equipment which does not comply with the relevant specifications contained in the Civil Air Regulations may, subject to the approval of the Administrator, be installed and used on aircraft for the purpose of experimentation intended to improve exterior lighting for a period not to exceed six months: *Provided, That:*

(1) The Administrator may grant approval for additional periods if he finds that experiments can be reasonably expected to contribute to improvements in exterior lighting;

(2) Not more than 15 aircraft possessing a U.S. certificate of airworthiness may have installed at any one time experimental exterior lighting equipment of one basic type;

(3) The Administrator shall prescribe such conditions and limitations as may be necessary to insure safety and avoid confusion in air navigation;

(4) The person engaged in the operation of the aircraft shall disclose publicly the deviations of the exterior lighting from the relevant specifications contained in the Civil Air Regulations at times and in a manner prescribed by the Administrator; and

(5) Upon application for approval to conduct experimentation with exterior lighting, the applicant shall advise the Administrator of the specific purpose of the experiments to be conducted; and, at the conclusion of the approved period of experimentation, he shall advise the Administrator of the detailed results thereof.

This regulation supersedes Special Civil Air Regulation No. SR-392B and shall terminate June 25, 1962, unless sooner superseded or rescinded.

(Secs. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on January 30, 1962.

N. E. HALABY,
Administrator.

[F.R. Doc. 62-1145; Filed, Feb. 2, 1962; 8:46 a.m.]

Chapter III—Federal Aviation Agency**SUBCHAPTER C—AIRCRAFT REGULATIONS**

[Reg. Docket No. 996; Amdt. 396]

PART 507—AIRWORTHINESS DIRECTIVES**Navion, Navion A, B, D, E, F, and G Aircraft**

A proposal to amend Part 507 of the regulations of the Administrator to include an airworthiness directive requiring repetitive inspections of the gear actuating parts and replacement of defective parts for Navion, Navion A, B, D, E, F, and G aircraft, which will supersede AD 50-24-1 (21 F.R. 9499), was published in 26 F.R. 12042.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is hereby amended by adding the following new airworthiness directive:

NAVION. Applies to Navion, Navion A, B, D, E, F, and G aircraft.

Compliance required within the next 25 hours' time in service after the effective date of this AD and at each periodic inspection thereafter.

The landing gear selector valve end fitting P/N 145-58145-3 (heat treated and non-heat treated) has a service history of failure during attempts to extend the gear. To preclude further difficulties:

Inspect the gear actuating system in accordance with Navion Service Letter No. 81 dated March 31, 1961. Any defective parts found as a result of this inspection must be replaced prior to further flight.

This supers. des AD 50-24-1 (21 F.R. 9499).

This amendment shall become effective March 6, 1962.

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on January 29, 1962.

G. S. MOORE,
Acting Director,
Flight Standards Service.

[F.R. Doc. 62-1140; Filed, Feb. 2, 1962; 8:46 a.m.]

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 61-FW-89]

PART 600—DESIGNATION OF FEDERAL AIRWAYS**Alteration**

On September 26, 1961, a notice of proposed rule making was published in the *FEDERAL REGISTER* (26 F.R. 9053) stating that the Federal Aviation Agency proposed to extend intermediate altitude VOR Federal airway No. 1741 from the Chattanooga, Tenn., VOR as a 10-mile wide airway to the McDonough, Ga., VOR.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the

making of the rule herein adopted, and due consideration has been given all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (25 F.R. 12582) and for the reasons stated in the notice, the following action is taken:

In § 600.1741 (26 F.R. 1093) the following changes are made:

a. In the caption "(Chattanooga, Tenn., to Cincinnati, Ohio)" is deleted and "(McDonough, Ga., to Cincinnati, Ohio)" is substituted therefor.

b. In the text "From the Chattanooga, Tenn., VOR via Bowling Green, Ky., VOR; INT of the Bowling Green VOR 009° and the Nabb, Ind., VOR 215° radials;" is deleted and "From the McDonough, Ga., VOR 10-mile wide airway to the Chattanooga, Tenn., VOR; thence via the Bowling Green, Ky., VOR; to the INT of the Bowling Green VOR 009° and the Nabb, Ind., VOR 215° radials;" is substituted therefor.

This amendment shall become effective 0001 e.s.t., April 5, 1962.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on January 30, 1962.

D. D. THOMAS,
Director, Air Traffic Service.

[F.R. Doc. 62-1139; Filed, Feb. 2, 1962; 8:46 a.m.]

Title 16—COMMERCIAL PRACTICES**Chapter I—Federal Trade Commission**

[Docket 8442 c.o.]

PART 13—PROHIBITED TRADE PRACTICES**Lewis Apparel Stores, Inc., et al.**

Subpart—Securing information by subterfuge: § 13.2168 *Securing information by subterfuge.* Subpart—Simulating another or product thereof: § 13.2217 *Government insignia, stamps, questionnaires, etc.* Subpart—Using misleading name—Vendor: § 13.2380 *Government connection.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Lewis Apparel Stores, Inc., et al., New York, N.Y., Docket 8442, Oct. 16, 1961]

In the Matter of Lewis Apparel Stores, Inc., a Corporation, and Morris Lewis, Leon Lewis, and David Lewis, Individually and as Officers of Said Corporation

Consent order requiring operators of a large number of retail clothing stores in eastern and midwestern States to cease attempting to obtain information concerning alleged delinquent debtors by subterfuge through such practices as their use, on printed cards requesting the current address and employment of such delinquents, of the name "Regional

¹ Amended to read as set forth.

Statistical Bureau" and a return address in Washington, D.C., both of which, together with the setup and phraseology of the form, represented and implied to the recipient that the request was being made by a branch of the United States Government.

The order to cease and desist, together with further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Lewis Apparel Stores, Inc., a corporation, and its officers, and Morris Lewis, Leon Lewis, and David Lewis, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the obtaining of information concerning delinquent debtors, or in the collection of, or attempting to collect, accounts, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the name "Regional Statistical Bureau," or any other name of similar import, to designate, describe, or refer to respondents' business.

2. Representing, directly or by implication, that requests for information concerning delinquent debtors are from the United States Government, or any agency or branch thereof, or that their business is in any way connected with the United States Government.

3. Using, or placing in the hands of others for use, any forms, questionnaires or other materials, printed or written, which do not clearly and expressly state that the purpose for which the information is requested is that of obtaining information concerning delinquent debtors.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: October 16, 1961.

By the Commission.

[SEAL]

JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 62-1146; Filed, Feb. 2, 1962; 8:46 a.m.]

Title 21—FOOD AND DRUGS**Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare****SUBCHAPTER A—GENERAL****PART 3—STATEMENTS OF GENERAL POLICY OR INTERPRETATION****Potassium Permanganate Preparations as Prescription Drugs**

Since publication in the *FEDERAL REGISTER* of August 23, 1960 (25 F.R. 8073), of § 3.7 (21 CFR 3.7), additional information has been received about certain veterinary products. It is apparent that the items in question are unsuitable for use

by man and are unlikely to be diverted into human medicine channels. Therefore, the Commissioner of Food and Drugs, pursuant to section 701(a) of the Federal Food, Drug, and Cosmetic Act and under the authority delegated to him by the Secretary of Health, Education, and Welfare (25 F.R. 8625), orders that § 3.7(c) (2), (3), (4), and (5) be amended. As amended, these paragraphs read as follows:

§ 3.7 Potassium permanganate preparations as prescription drugs.

(c) * * *

(2) Potassium permanganate labeled for use as a prescription component in human drugs under the exemption provided in § 1.106(k) of this chapter or labeled for manufacturing use under the exemption provided in § 1.106(l) will be regarded as misbranded unless the label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

(3) These drugs will be regarded as misbranded when intended for veterinary use unless the label bears the legend, "Caution: Federal law restricts this drug to sale by or on the order of a licensed veterinarian"; *Provided, however*, That this shall not apply to a drug labeled and marketed for veterinary use if such drug contains not more than 50 percent of potassium permanganate and includes other ingredients which make it unsuitable for human use and unlikely that the article would be used in an attempt to induce abortion.

(4) Any preparation of potassium permanganate intended for over-the-counter sale for human use internally or by application to any mucous membranes or for use in the vagina will be regarded as misbranded under the provisions of section 502(f) (1) and (2) and section 502(j) of the act.

(5) Any other preparation of potassium permanganate intended for over-the-counter sale for human use will be regarded as misbranded under section 502(f) (1) and (2) and section 502(j) of the act unless, among other things, all of the following conditions are met:

(Sec. 701(a), 52 Stat. 1055; 21 U.S.C. 371(a))

Dated: January 29, 1962.

GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 62-1161; Filed, Feb. 2, 1962;
8:48 a.m.]

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Tolerance for Residues of Sodium 2,2-Dichloropropionate

A petition was filed with the Food and Drug Administration by Dow Chemical Company, Midland, Michigan, requesting the establishment of a tolerance for

residues of sodium 2,2-dichloropropionate, as 2,2-dichloropropionic acid, in or on coffee at 2 parts per million.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purposes for which a tolerance is being established.

After consideration of the data submitted in the petition and other relevant material which show that the tolerance established in this order will protect the public health, and by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408(d) (2), 68 Stat. 512; 21 U.S.C. 346a(d) (2)) and delegated to the Commissioner of Food and Drugs by the Secretary (25 F.R. 8625), the regulations for tolerances for pesticide chemicals in or on raw agricultural commodities are amended by adding to § 120.150 (21 CFR 120.150 (26 F.R. 1627)) a tolerance for the subject pesticide chemical in or on coffee:

§ 120.150 Tolerances for residues of sodium 2,2-dichloropropionate.

* * *

2 parts per million in or on coffee.

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 408(d) (2), 68 Stat. 512; 21 U.S.C. 346a (d) (2))

Dated: January 29, 1962.

GEO. P. LARRICK,
Commissioner of Food and Drugs.
[F.R. Doc. 62-1162; Filed, Feb. 2, 1962;
8:48 a.m.]

Title 22—FOREIGN RELATIONS

Chapter I—Department of State

SUBCHAPTER B—PERSONNEL

[Dept. Reg. 108.477]

PART 11—APPOINTMENT OF FOREIGN SERVICE OFFICERS

Requirements for Examinees

Section 11.2(b) is amended by changing the fourth sentence to read as follows:

"Except as provided in paragraph (c) in this section, to be designated for the written examination a candidate, as of the first day of the month in which the closing date for the filing of applications occurs, shall have been a citizen of the United States for at least 9 years and shall be at least 21 but under 31 years of age, except that an applicant who has been awarded a Bachelor's degree by a college or university, or has completed successfully his junior year at a college or university, may qualify as to age if at least 20 but under 31 years of age."

(Secs. 212, 302, 516, 60 Stat. 1001, 1008, as amended; 22 U.S.C. 827, 842, 911)

Dated: January 26, 1962.

For the Secretary of State.

WILLIAM J. CROCKETT,
*Assistant Secretary
for Administration.*

[F.R. Doc. 62-1167; Filed, Feb. 2, 1962;
8:49 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 4—INFORMATION ON POSTAL MATTERS

PART 168—DIRECTORY OF INTERNATIONAL MAIL

Miscellaneous Amendments

The regulations of the Post Office Department are amended as follows:

I. In § 4.2 *General postal publications*, as published in 26 F.R. 11514, and as amended by 26 F.R. 12122, amend the publication entitled "Annual Report of the Postmaster General" to read as follows:

1961 Annual Report of the Postmaster General..... \$0.70

Presents an overall picture of the activities of the Department for fiscal year 1961. Following a brief financial summary, this report gives details on such topics as operations and services; research and engineering; transportation policies and methods; financial and related services; facilities and equipment; public relations; the inspection service; legal matters and legislative program; judicial function and other functions of the Post Office Department. Includes a comprehensive appendix containing numerous tables of statistical data on the Postal Service.

NOTE: The corresponding Postal Manual section is 114.2.

(R.S. 161, as amended; 5 U.S.C. 22, 39 U.S.C. 501)

II. In § 168.5 *Individual country regulations* as published in 26 F.R. 8725-8805, make the following changes in the country "Ghana" under Parcel Post to show that Ghanaian addressees are required to obtain specific import licenses for all commodities imported except as specified herein.

1. In the item *Observations*, delete the first two paragraphs.

2. Amend the item *Import restrictions*, to read as follows:

Import restrictions. The attention of senders should be called to the following requirements, which are to be met by addressees:

Addressees in Ghana are required to obtain specific import licenses for all commodities imported, except for the following categories: (a) Unsolicited gifts not exceeding £25 (\$70) in value; (b) single copies of books and periodicals sent to individuals; (c) personal or household effects; (d) bona fide trade samples; and (e) articles covered by Ghanaian reimportation certificates.

(R.S. 161, as amended; 5 U.S.C. 22, 39 U.S.C. 501, 505)

LOUIS J. DOYLE,
General Counsel.

[F.R. Doc. 62-1157; Filed, Feb. 2, 1962;
8:47 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2600]

[Montana 037733]

MONTANA

Reservoir Site Restoration No. 26-A; Revoking Reservoir Site Reserve No. 5

By virtue of the authority contained in the act of October 2, 1888 (25 Stat. 526; 43 U.S.C. 662), as amended, it is ordered as follows:

The departmental order of March 13, 1890, which withdrew lands in Montana

for reservoir site purposes under the provisions of the act of October 2, 1888, supra, is hereby revoked so far as it affects the following described lands:

PRINCIPAL MERIDIAN

Reservoir Site Reserve No. 5

T. 21 N., R. 7 W.,
Sec. 14, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$,
W $\frac{1}{2}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 23, E $\frac{1}{2}$ W $\frac{1}{2}$ and E $\frac{1}{2}$;
Sec. 24;
Sec. 25, N $\frac{1}{2}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 26, NE $\frac{1}{4}$.

The areas described aggregating approximately 1920 acres, are included in withdrawals for other purposes.

KENNETH HOLUM,

Assistant Secretary of the Interior.

JANUARY 30, 1962.

[F.R. Doc. 62-1147; Filed, Feb. 2, 1962;
8:46 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 959]

[AO-322-A1]

ONIONS GROWN IN SOUTH TEXAS

Decision With Respect to Proposed Amendments to Marketing Agreement and Order; and Referendum Order

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674), and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Edinburg, Texas, November 28, 1961, pursuant to notice thereof which was published in the FEDERAL REGISTER (26 F.R. 10772), upon proposed amendments to Marketing Agreement No. 143 and Order No. 959 (7 CFR Part 959 (formerly Order No. 133 Part 1033)), regulating the handling of onions grown in South Texas.

On the basis of the evidence introduced at the aforesaid hearing and the record thereof, a recommended decision in this proceeding was filed on December 29, 1961, with the Hearing Clerk, United States Department of Agriculture, and notice thereof was published in the January 5, 1962, FEDERAL REGISTER (27 F.R. 108). The notice allowed ten days after publication (or until January 15, 1962) for filing exceptions thereto. Upon request from the South Texas Onion Committee for an extension of time, the period for filing exceptions was extended to not later than the close of business on January 19, 1962 (27 F.R. 411).

Exceptions filed. Within the period provided therefor, four exceptions to the findings in the recommended decision were filed by interested parties, and one statement was filed which does not constitute an exception. They are as follows:

(a) An exception led by the South Texas Onion Committee, Mercedes, Texas, the proponents of the proposed amendments to the marketing agreement and order for onions produced in South Texas, supports the need for shipping holidays but clarifies the method of application and the duration of such holidays by stating that such holidays should be authorized for Sundays only and to be applied uniformly over the entire production area, not merely a portion thereof.

(b) An exception filed by Charles Wetegrove Co., Inc., Raymondville, Texas, supports the findings with respect to the need for shipping holidays but disagrees with the method of application in that a week end holiday should not be enforced consecutively with a special holiday.

(c) An exception filed by Wetegrove Produce Co., Raymondville, Texas, is the same as exception (b) listed above.

(d) An exception filed by Cullum & Jones, Del Rio, Texas, objects to shipping holidays, as such.

(e) A statement was filed by Dixondale Plant Farms, Carrizo Springs, Texas, supporting the shipment of only number one onions regardless of color or size. As this statement does not constitute an exception a ruling on it is unnecessary.

Rulings on exceptions. The need for establishing holidays prohibiting the packaging and loading of onions on Sundays and other special periods is supported by substantial evidence in the record of hearing on the proposed amendments. There was some controversy, however, as to the duration of such holidays arising out of the method of application. The effect of exception (a), which was filed by the proponents of the proposed amendments, is to clarify this matter and thus eliminate the controversy by restricting the use of this authority to Sundays only. Consequently, since there is no conflict with the record testimony which supports the need for shipping holidays on Sundays, exception (a), filed by the South Texas Onion Committee, is granted. Therefore, the provision on holidays should be revised to limit such holidays to Sundays only, and such holidays, when established, to be applicable uniformly to the entire production area.

No conflict is evident between two other exceptions filed, namely exceptions (b) and (c), and the ruling on exception (a). Hence, to the extent that these exceptions are in agreement with this ruling, they are granted.

Exception (d) objects to shipping holidays but gives no reason or argument based on the record of hearing for such objection. Since this exception is at variance with the record evidence, it is denied.

Material issues, findings and conclusions. The material issues, findings and conclusions, and the general findings of the recommended decision set forth in the FEDERAL REGISTER (27 F.R. 108), except for the holiday provision and the finding thereon which differ from the above rulings, are hereby approved and adopted as the material issues, findings and conclusions, and the general findings of this decision as if set forth in full herein.

Amendment of the marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement, As Amended, Regulating the Handling of Onions Grown in South Texas" and "Order Amending the Order Regulating the Handling of Onions Grown in South Texas" which have been decided upon as the appropriate and detailed means of effectuating the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the

aforesaid rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

It is hereby ordered, That all of this decision, except the annexed marketing agreement, as amended, be published in the FEDERAL REGISTER. The regulatory provisions of the said marketing agreement, as amended, are identical with those contained in the annexed order, which will be published with this decision.

Referendum order. Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674), it is hereby directed that a referendum be conducted among producers who, during the calendar year 1961 (which is hereby determined to be a representative period for the purpose of such referendum), were engaged, in the production area as defined in § 959.4 of this part, in the production of onions for market to ascertain whether such producers favor the issuance of the annexed order.

The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda Among Producers in Connection with Marketing Orders (Except those Applicable to Milk and its Products) to Become Effective Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (15 F.R. 5176). The ballots used in the referendum shall contain a summary describing the proposed amendments.

W. J. Cremins and K. W. Schaible of the Fruit and Vegetable Division, Agricultural Marketing Service, are hereby designated as agents of the Secretary of Agriculture to conduct such referendum jointly or severally. Said agents may appoint any person or persons to assist them in performing their functions hereunder.

Ballots to be cast in the referendum and copies of the text of the said amendments and the order may be obtained from any referendum agent or appointee.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: January 30, 1962.

JAMES T. RALPH,
Assistant Secretary.

Order¹ Amending the Order Regulating the Handling of Onions Grown in South Texas

§ 959.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations made in connection with the issuance of the order, and all of said previous findings and determinations

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

are hereby ratified and affirmed except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674) and the applicable rules of practice and procedure effective thereunder (7 CFR Part 900), a public hearing was held at Edinburg, Texas, on November 28, 1961, upon proposed amendments to Marketing Agreement No. 143 and Order No. 959 (7 CFR Part 959), regulating the handling of onions grown in South Texas. Upon the basis of the evidence introduced at such hearing, and the record thereof, it is found that:

(1) The said order, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act with respect to onions produced in the production area, by establishing and maintaining such orderly marketing conditions therefor as will tend to establish, as prices to the producers thereof, parity prices and by protecting the interest of the consumer (i) by approaching the level of prices which it is declared in the act to be the policy of Congress to establish by a gradual correction of the current level of prices at as rapid a rate as the Secretary deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (ii) by authorizing no action which has for its purpose the maintenance of prices to producers of such onions above the parity level, and (iii) by authorizing the establishment and maintenance of such minimum standards of quality and maturity, and such grading and inspection requirements as may be incidental thereto, as will tend to effectuate such orderly marketing of such onions as will be in the public interest;

(2) The said order, as hereby amended, regulates the handling of onions grown in the production area in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing order upon which hearings have been held;

(3) The said order, as hereby amended, is limited in application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act; and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) The said order, as hereby amended, prescribes, so far as practicable, such different terms, applicable to different parts of the production area, as are necessary to give due recognition to the differences in the production and marketing of onions grown in the production area; and

(5) All handling of onions as defined in this part is in the current of interstate or foreign commerce or directly

burdens, obstructs, or affects such commerce.

It is, therefore, ordered, That, on and after the effective date hereof, the handling of onions grown in the production area as defined herein shall be in conformity to, and in compliance with, the terms and conditions of said order, as hereby amended, and such terms and conditions are as follows:

1. Amend § 959.7 *Handle* to read as follows:

§ 959.7 *Handle.*

"Handle" or "ship" means to package, sell, transport, or in any way to place onions in the current of the commerce within the production area or between the production area and any point outside thereof. Such term shall not include the transportation, sale, or delivery of field-run onions to a person in the production area who is a registered handler.

2. Amend § 959.12 *Pack* to read as follows:

§ 959.12 *Pack.*

"Pack" means a quantity of onions specified by grade, size, weight, or count, or by type or condition of container, or any combination of these recommended by the committee and approved by the Secretary.

3. Amend § 959.31 *Alternate members* to read as follows:

§ 959.31 *Alternate members.*

An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate, during such member's absence or when designated to do so by the member for whom he is an alternate. In the event both a member of the committee and his alternate are unable to attend a committee meeting, the member or his alternate or the committee (in that order) may designate another alternate from the same district and the same group (handler or grower) to serve in such member's place and stead. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor of such member is selected and has qualified. The committee may request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

4. Add new subparagraph (5) to § 959.52(b) to read as follows:

§ 959.52 *Issuance of regulations.*

* * * * *

(b) Such regulations may:

* * * * *

(5) Establish holidays by prohibiting throughout the entire production area the packaging and loading of onions on Sundays.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

[F.R. Doc. 62-1148; Filed, Feb. 2, 1962; 8:47 a.m.]

Agricultural Stabilization and Conservation Service

[7 CFR Parts 1046, 1095]

[Docket Nos. AO-123-A24, AO-308-A2]

MILK IN LOUISVILLE-LEXINGTON, KENTUCKY, AND OHIO VALLEY MARKETING AREAS

Notice of Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and Orders

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Assistant Secretary, United States Department of Agriculture, with respect to proposed amendments to the tentative marketing agreements, and orders regulating the handling of milk in the Louisville-Lexington, Kentucky, and Ohio Valley marketing areas. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington 25, D.C., not later than the close of business the 5th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate.

Preliminary statement. The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreements and to the orders, were formulated, was conducted at Louisville, Kentucky, on September 18-27, 1961, pursuant to notice thereof which was issued August 25, 1961 (26 F.R. 8105).

Proposals considered at this hearing pertained to (1) the consolidation under a single order of two marketing areas where the handling of milk is presently regulated by the Louisville-Lexington (Order No. 95) and the Ohio Valley (Order No. 46) Federal milk orders and (2) the amendment of the two separate orders irrespective of whether the proposed consolidation is or is not adopted.

On November 6, 1961 (26 F.R. 10597), a recommended decision was issued by the Department relating only to the material issue of whether the Ohio Valley order should be amended to provide that a cooperative association may be the handler for bulk tank milk of its producer members for which it assumes responsibility for the handling from the farm to a pool plant, such amendment to include appropriate conforming changes throughout the order. Subsequently, the Department issued a final decision on November 21, 1961 (26 F.R. 11079), and a final order on November 27, 1961 (26 F.R. 11284), concerning this material issue. The other material issues on the record were reserved for a further decision on that record. These issues are

the subject of the decision contained herein.

The material issues on the record of the hearing relate to:

1. Consolidation of the Louisville-Lexington order and the Ohio Valley order into one order.

2. Marketing area.

3. Provisions of the consolidated order with respect to:

- (a) Milk to be pooled and priced;
- (b) Classification and allocation of milk;
- (c) Class prices;
- (d) Payments on unpriced milk disposed of in the marketing area from non-pool plants;
- (e) Payments to producers; and
- (f) Administrative and miscellaneous provisions.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Consolidation of orders.* Order No. 95 (new number) which regulates the handling of milk in the Louisville-Lexington marketing area and Order No. 46 (new number) which regulates the handling of milk in the Ohio Valley marketing area should be consolidated into one order to be designated as Order No. 46.

Kyana Milk Producers, Inc., a cooperative association representing approximately 3,300 member producers, proposed that the handling of milk in the present Louisville-Lexington and Ohio Valley marketing areas be regulated under one consolidated order. This association represents nearly all of the producers who supply the regular handlers in both markets with the exception of producers recently shifted from another Federal order market to the Louisville-Lexington market. Of the approximately 3,300 members, about 2,300 are associated with the Louisville-Lexington market while the remaining members are associated with the Ohio Valley market.

The merger on May 1, 1961, of four cooperative associations in the Louisville-Lexington and Ohio Valley markets into one association under the name of Kyana Milk Producers has made this association the responsible marketing agent for all but a small portion of the total producer milk supplies in the two markets. The association directs the movement of producer milk from farms to plants and assumes the responsibility for supplying handlers with their day-to-day fluid milk requirements. The association also arranges for the disposition of the surplus milk of both markets. The performance of these marketing functions is facilitated by the operation of a plant located at Louisville which serves as an equalization plant. Milk accumulated at this plant is either moved to handlers' plants in response to their varying milk needs or is moved to manufacturing plants.

The cooperative association desires that the two orders be consolidated so that it may perform its marketing functions in a manner which is efficient in response to the needs of the markets it serves and which is equitable to its entire membership. The achievement

of these objectives would be facilitated if the markets served are under a single order regulation. In order to gain efficiency in the handling of milk flexibility in movements of milk among plants served by the cooperative association would be desirable.

Movement of milk between plants under the separate orders presents classification and allocation problems which would not be present with regard to transfers of milk between plants under the same order. For example, priority is given to producer milk in the allocation of Class I milk under each order. Hence, milk received at a pool plant from a plant regulated under another order is given a secondary status with respect to assignment to Class I milk. Moreover, separate regulation may inhibit to some degree the shifting of producers between plants under the different orders. A base and excess plan is used in the Ohio Valley order and a take-out and pay-back seasonal incentive plan is used in the Louisville-Lexington order. These separate seasonal plans between the two orders also tend to hinder shifts of producers between the markets. All these distinctions would be eliminated in a combined order and they would facilitate the marketing problems of the cooperative association.

The distribution systems of the handlers under the two orders overlap both within the two marketing areas and in unregulated areas. Milk distribution routes originating from Louisville-Lexington order plants extend over a large part of the Ohio Valley marketing area. Under these circumstances it is desirable that all of the handlers under the two orders be under a single regulation which will provide one pricing arrangement. Under the separate orders different classification systems, different class prices and different utilizations of milk have resulted in price disparities between the two markets. A single pricing system under one order is therefore desirable for pricing milk throughout the entire consolidated area.

To accomplish the merger effectively and most equitably, the assets in the custody of the market administrator in administrative and producer-settlement funds under the Ohio Valley order should be merged with assets in similar funds under the Louisville-Lexington order. Any liabilities of such funds of the individual orders should be paid from the new funds so created. To distribute such funds under one order to producers and handlers under that order would unduly burden the producers and handlers now regulated by the other order. To distribute the funds under both orders and again accumulate the necessary reserves would entail considerable administrative detail for no good purpose.

2. *Marketing area.* The marketing area of the consolidated order should include all of the territory within the marketing areas of the present Louisville-Lexington and Ohio Valley orders plus the additional counties of Knox, Daviess, Martin, Orange and Washington in the State of Indiana and the counties of Mercer, Boyle and Garrard in the State of Kentucky. This territory may

appropriately be designated as the "Louisville-Lexington-Evansville marketing area."

The marketing area of the Louisville-Lexington order now includes three counties in Indiana and twenty counties in the north central part of Kentucky. The marketing area of the present Ohio Valley order adjoins the western boundary of the Louisville-Lexington marketing area and includes nine Indiana counties and eleven Kentucky counties.

In conformity with the conclusion of this decision that the Louisville-Lexington and Ohio Valley orders should be consolidated, all of the territory now included in the marketing areas of these two orders should be included in the marketing area of the consolidated order.

Besides the proposal by Kyana Milk Producers to combine the marketing areas of the two orders, various proposals were made to add certain other areas either to the individual marketing areas or to the combined area. In Indiana, Sullivan, Greene, Knox, Daviess, Martin, Lawrence, Orange, and Washington Counties were proposed as part of the consolidated marketing area. Of these counties, Knox and Daviess were also proposed as a part of the Ohio Valley marketing area. In Kentucky, Todd and Logan Counties were proposed to be added to the Ohio Valley marketing area and Mercer, Boyle, and Garrard Counties were proposed to be added to the Louisville-Lexington marketing area. Deletion of Montgomery County, Kentucky, from the Louisville-Lexington marketing area was also proposed.

Of the eight Indiana counties proposed to be included in the consolidated marketing area, Orange and Washington were proposed by a handler operating a pool plant under the Ohio Valley order. These two counties, and the other six previously named, were also proposed by the operator of a nonpool plant at Vincennes, Indiana. This plant ordinarily disposes of more than 20 percent of its fluid disposition on routes in the Ohio Valley marketing area. It also has disposition in the marketing areas regulated by the Louisville-Lexington and the Suburban St. Louis orders. Under the pool plant standards recommended herein this plant would be fully regulated as a pool plant.

Extension of regulation to the five Indiana counties of Knox, Daviess, Martin, Orange, and Washington would bring under full regulation as pool plants two other plants at Vincennes in Knox County, a plant at Loogootee in Martin County, and a plant at Salem in Washington County. By including these five counties in the area, most of the sales made by each of these plants would be inside the marketing area. Nearly one-half of the sales from the Vincennes plant operated by the proponent would be in the marketing area herein proposed.

There is only a small quantity of milk sold in this 5-county area by a plant which may not qualify as a pool plant. That plant, located at Robinson, Illinois, accounts for minor percentages of sales in these five counties.

The proposed extension of regulation is necessary to provide for orderly marketing of milk in such areas through application of class prices to be paid by handlers disposing of milk in such areas and a uniform system of accounting for milk, including pooling with other fully regulated handlers.

Handlers not subject to regulation who distribute milk in these counties pay farmers prices approximating order blend prices irrespective of actual use of milk. Proponents complained that because of unregulated competitors' ability to purchase milk for Class I use at a price equal to order blend prices, proponents are at a disadvantage in supplying fluid outlets in these counties. Unregulated plants in these areas do not carry a full year-round supply of milk, but depend on supplemental receipts from other plants, and thus are able to maintain a high level of Class I utilization while nevertheless paying farmers a price equal only to blend prices under nearby orders.

Handlers presently regulated by the Ohio Valley or Louisville-Lexington orders and the Vincennes plant which would be regulated under the pooling requirements of this proposed order have the following percentages of total fluid milk product sales in each of these counties: Knox 43, Daviess 56, Martin 50, Orange 69, and Washington, more than 60. In Knox County another 5 percent of total sales are made by a handler regulated under the Indianapolis order.

Lawrence, Greene, and Sullivan Counties in Indiana should not be included in the marketing area.

A handler located at Seymour in Jackson County has about 18 percent of its sales in Lawrence County through a distribution outlet at Bedford and has minor sales in Washington and Orange Counties. This plant's distribution in Lawrence County accounts for about 40 percent of the sales in the county. A plant at Bloomington, Indiana, has distribution in Lawrence County estimated to be about 30 percent of the total, and has distribution in Greene County estimated to be 40 percent of the total. Distribution in Greene and Lawrence Counties by the plant at Bloomington represents about 22 percent of its fluid sales. While these plants at Seymour and Bloomington would be fully regulated if Greene and Lawrence Counties were included in the marketing area, the major part of their fluid disposition would be outside of territory now regulated or proposed to be regulated. Such disposition would be substantially in competition with plants which would not be regulated under the proposed order. It is concluded that these two counties should not be included in the marketing area.

With respect to Sullivan County, the data provided by proponent reveal some inconsistencies which prevent a definite conclusion as to the merits of the proposal. It is clear, however, that some of the fluid distribution in Sullivan County is by plants not now regulated under any Federal order, nor is it expected that they would qualify as pool

plants if Sullivan County were included in the proposed marketing area.

Boyle, Mercer, and Garrard Counties in Kentucky should be included in the marketing area to be regulated by the order. The fluid distribution in these counties by five plants which maintain a high Class I utilization while nevertheless paying farmers a price equal only to an order blend price constitutes a competitive advantage which is disruptive to the orderly marketing of milk in these areas. The extension of the regulation in these three Kentucky counties is expected to include as fully regulated plants all plants now disposing of milk in these counties. Distribution outside of the territory here adopted for the marketing area by plants which would be brought under regulation by this extension is very largely in competition only with plants which would be subject to Federal order regulation. The application of class pricing and uniform accounting for milk under a system of market pooling will establish orderly marketing conditions in these three counties.

In Boyle County, Kentucky, about half of the fluid sales are by regulated handlers. A small percentage of this distribution is regulated under the Cincinnati Federal order, and most of it under the Louisville-Lexington order. Another 25 percent of the sales are by a plant at Somerset partially regulated under the Louisville-Lexington order by virtue of sales in presently regulated territory. These sales, and disposition by a presently unregulated plant located in the county at Danville, account for most of the fluid disposition in the county.

In Mercer County, Kentucky, more than 70 percent of the fluid milk disposition is by plants now regulated under the Louisville-Lexington order. About 7 percent of the sales are by a plant at Campbellsville, Kentucky, which is partially regulated under the order by virtue of sales in presently regulated territory. The remainder of the milk distribution in the county is by an unregulated plant located in the county at Harrodsburg.

In Garrard County, Kentucky, about 65 percent of the fluid milk distribution is by handlers presently regulated under the Louisville-Lexington order. About 10 percent of the distribution in the county is by the plant at Somerset partially regulated by virtue of its sales in the area presently regulated by the order. The remainder of the sales are by an unregulated plant located in the county at Lancaster.

This three-county area thus is served preponderantly by handlers presently regulated. Effectiveness of the regulation in fulfilling the purpose of establishing orderly marketing conditions will be improved by inclusion of this territory in the marketing area.

A proposal made to delete Montgomery County, Kentucky, from the marketing area should not be adopted. This proposal was made by a handler whose pool plant is located at Morehead, Kentucky, and whose sales in the area represent about 10-12 percent of his Grade A receipts. Approximately 45 percent of the fluid sales in the county are from this

plant. About 14 percent of the distribution in the county is out of a plant regulated under the Cincinnati order and the remainder is by plants regulated under the Louisville-Lexington order.

The proposed deletion was requested to enable the proponent to pay a higher price to his own dairy farmer suppliers rather than make payments into the producer-settlement fund. However, if Montgomery County were deleted from the marketing area the handler would become unregulated and would not be required to pay the minimum prices established by the order. Nevertheless, all of the other handlers selling in the county would continue to be regulated by virtue of their sales in other counties within the marketing area. Although such handlers account for more than one-half of the total distribution in the county, they would then be in competition there with a plant not required to pay minimum prices for milk.

Todd and Logan Counties, Kentucky, should not be included in the marketing area of the proposed order. In Logan County, all fluid distribution is by federally regulated plants, but more of the disposition is by Nashville order plants than by plants under the Louisville-Lexington and Ohio Valley orders. The evidence with respect to Todd County shows considerable disparity in the testimony of witnesses as to the share of the fluid disposition regulated under the Louisville-Lexington, Ohio Valley, Nashville and Paducah orders. None of the sales in Todd County are by unregulated plants. The evidence is not sufficient to conclude whether these counties should be included in the marketing area of the proposed order. Inasmuch as all milk sold in these counties is sold by regulated plants, the problem of orderly marketing is not acute.

3. Provisions of the consolidated order. Many of the provisions of the Louisville-Lexington and Ohio Valley orders which have been found to be appropriate for regulating the handling of milk in these markets are similar and therefore appropriate for regulating the handling of milk in the proposed marketing area. The provisions in which there are substantive differences in the two orders or those for which changes are considered are discussed below.

(a) *Milk to be pooled and priced.* The determination of the milk to be pooled and priced under the consolidated order may be facilitated by defining the several types of milk and milk products and those persons and facilities associated with the handling of such milk and milk products. For purposes of the consolidated order, definitions similar to those contained in the Louisville-Lexington order will be suitable in most cases.

A producer should be defined as a person who produces milk on a dairy farm which is approved by a duly constituted health authority for the production of milk for fluid disposition, which milk is received at a pool plant, or by a cooperative association, or is diverted as described in subsequent findings. Health authority approval would include approval of milk by the authority to administer the regulations governing the

quality of milk acceptable to agencies of the United States Government for fluid consumption in its institutions or bases located in the marketing area. The proposed exclusion of dairy farmers whose permit is temporary or on an emergency basis is not adopted. It was not shown that such approvals constitute a problem in this market. A producer's connection with the market should be established by receipt of his milk at a pool plant. In the instance of bulk tank milk for which a cooperative association is a handler, the cooperative is the first handler receiving such milk. Accordingly, the term "producer" is intended to include such dairy farmers whose milk is delivered by a cooperative association as a handler to other handlers' pool plants.

Marketing conditions necessitate the handling of reserve milk by diversion from producers' farms to nonpool plants. This is often the more economical method of moving the milk rather than assembling it first at a pool plant which has no need for the milk and then moving it to a nonpool manufacturing plant. In the interest of assuring an adequate, stable supply for the fluid market, and a stable market for producers, a dairy farmer should retain his producer status during reasonable periods while his milk is diverted to a nonpool plant. The Louisville-Lexington order allows unlimited diversion of producer milk by a cooperative association. Diversion by other handlers is allowed, but with a limitation with respect to each producer that his milk shall not be diverted for more than one-half of the number of days in any of the months of October, November, January, and February. It is concluded that the same kind of diversion allowance may apply properly in the case of all handlers. Official notice is taken of the fact that manufacturing facilities are being installed in Kyana Milk Producers' pool plant at Louisville. This will tend to reduce the need for diversion. Accordingly, diversion of a producer's milk by any handler should be allowed on any day in the months of December and March through September, and on not more than one-half of the days of the month in any of the months of October, November, January and February. In view of the provision that a cooperative association may be the handler on bulk tank milk and the fact that the supply for the market is largely from members of the cooperative association which requested such provision, diversion between pool plants, now provided for in both orders, will no longer be necessary.

So as to provide proper location pricing and accountability for milk diverted to nonpool plants, such milk shall be deemed to be received at the pool plant as part of the plant receipts if diverted by the operator of the plant. In case of diversions to nonpool plants by a cooperative association, the location of receipt shall be deemed to be the location of the plant from which diverted.

A handler should be defined as a person who operates a city plant or a country plant. Also, a cooperative association should be a handler with respect to producer milk diverted by it to nonpool

plants. A cooperative association should be allowed to act as the handler also with respect to milk of its producer members which is picked up in bulk at the farm by tank trucks owned by, operated by, or under contract to such association and delivered in such trucks (or in trucks similarly under the control of the association into which the milk may be reloaded) to pool plants of other handlers. With respect to the Ohio Valley market, findings and conclusions have already been made on this record to adopt such a provision in a decision issued November 21, 1961 (26 F.R. 11079). Because of the similarity of considerations with respect to the proposed new marketing area, repetition of such findings and conclusions is unnecessary in this instance. The same provision should be adopted in the consolidated order.

The term "producer-handler" should be defined as presently in the Ohio Valley order. This is a more specific definition than that contained in the Louisville-Lexington order in that it requires the producer-handler to provide proof to the market administrator that the operation is his personal enterprise and risk.

The terms "city plant" and "country plant" in the Louisville-Lexington order closely correspond to the two types of "fluid milk plant" in the Ohio Valley order. The first type of fluid milk plant in the Ohio Valley order disposes of "Grade A" fluid milk products on routes in the marketing area, and the second type is a plant which supplies the first type of plant, or is approved to do so. The terms "city plant" and "country plant" in the consolidated order will serve to define plants performing such functions, but these definitions are not indicative of whether the plants meet order requirements which would subject them to full regulation.

Pool plant provisions similar to those of the Louisville-Lexington order should be adopted for the consolidated order, subject to some modifications. With the expanded marketing area adopted herein, the smaller percentage requirement (10 percent of receipts from dairy farmers, cooperative associations and country plants rather than the 25 percent required in the Ohio Valley order) of distribution in the marketing area for pool plant qualification is suitable for all plants likely to be associated with the market. Another basis for qualification should be added, however, whereby a plant distributing an average of 13,500 pounds or more of Class I milk per day in the marketing area would become fully regulated, even though this amount represents less than 10 percent of the receipts previously mentioned. Under the provisions of the present orders, a plant with a large volume of Class I business could acquire a large percentage of the total Class I distribution in the marketing area without becoming subject to full regulation. Any plant which distributes within the marketing area a volume of Class I milk equal to one percent or more of the total Class I milk in the market is an important competitive factor, however, and should be sub-

ject to full regulation, even though this volume represents less than 10 percent of its total Class I business.

The total Class I disposition in the two marketing areas by all pool plants regulated by the Louisville-Lexington and Ohio Valley orders plus the sales of nonpool plants in these areas averages approximately 1,350,000 pounds per day. The order, therefore, should provide for full regulation of any plant whose distribution of Class I milk in the marketing area amounts to an average of 13,500 pounds or more per day. Use of the fixed figure rather than 1 percent of the total Class I sales will afford plants an opportunity to know beforehand whether they will be subject to regulation and will permit them to adjust their business accordingly. A constant figure will also tend to avoid the shifting in and out of the pool of plants whose distribution in the area might be fairly constant but might become more or less than one percent as total Class I milk in the pool varies.

The requirements for country plants should be increased for the months of October through March to require that 50 percent of the receipts in the month from approved dairy farmers and from cooperative associations are delivered to city plants. No country plants now qualify as pool plants for the Louisville-Lexington market on the basis of the present 10 percent shipping requirements, nor are there any pool country plants qualified under the Ohio Valley order where a 50 percent requirement is contained in the present order. The 50 percent requirement will guarantee a fuller association of a country plant with the market if it is to be pooled, and is appropriate in view of the adequacy of supply represented by present producer sources of milk. In the months of April through September, a country plant should qualify on the basis of either its prior qualification in all of the preceding months of October through March or on the basis of shipment of 40 percent of its receipts to city plants.

Provision should be made for pool status of a country plant operated by a cooperative association if two-thirds of the milk of its members approved by health authorities to supply milk which may be disposed of as Grade A milk is delivered from farms to pool plants of other handlers or is transferred from the association's plant to such pool plants.

A similar provision is now contained in the Louisville-Lexington order, requiring, however, that 75 percent of member milk be supplied to other pool plants. The current provision also qualifies the cooperative association plant in any month of March through September if it had qualified as a pool plant on the percentage basis in each of the preceding months of October through February.

The plant of the cooperative association has served as an equalization supply plant for the entire Louisville-Lexington market. In view of the extension of membership of the association to the Ohio Valley market, the association stated that the plant would perform the same function in the consolidated marketing area.

With the prevalence of bulk milk tanks on farms in these markets, much of the milk supply of processing plants moves in bulk form directly from farms to such plants. Changes in daily requirements of processing plants may be met by the cooperative association through rearrangement of the bulk tank movement of milk from farms to plants. Under these circumstances the most efficient movement of milk by the association, in its role of supplying milk processing plants, does not require that more than a small part of the milk move through the association's plant. For this reason it is not practical for the association plant to qualify for pool status on the basis of shipments from the plant to other pool plants. Nevertheless, the plant is essential to the service provided by the association in meeting daily requirements of the handlers. Besides serving as a standby plant from which milk may be transferred to pool plants, it also serves as an assembly plant for milk in excess of other handler's needs. Such milk constitutes part of the reserve supply of the market which must be disposed of primarily for use in manufactured dairy products which may involve shipment to nonpool plants. Other reserve milk has been disposed of by the cooperative association by diversion from producers' farm to nonpool plants for manufacturing.

As the authorized agent to market the milk of its members, who constitute 90 percent or more of the producers in the combined market, Kyana Milk Producers bears the burden of disposing of the reserve milk in the manner described. Because of the essential part this plant plays in such reserve handling operations, it is necessary that producers maintain their producer status when their milk must be moved to this plant. It is desirable, however, that a standard of performance be provided to assure that such a plant is substantially associated with the market. The requirement with respect to deliveries of member milk to pool plants provides such a standard. In view of the volume of reserve milk to be handled, the requirement that two-thirds of the member milk be delivered to other pool plants should be substituted for the present 75 percent requirement in the Louisville-Lexington order. The plant may qualify for pool status on this basis in any month. In the months of March through September pool status should continue to be allowed on the basis of prior pool status in each of the months of October through February.

Because of the closeness of other marketing areas and overlapping of distribution of handlers under these and other orders, provision should be made for a method to determine under which order a plant should be regulated if it qualifies under more than one order. The Louisville-Lexington order now provides that such a plant shall not be a pool plant if it qualifies under another order unless the plant has disposed of a greater quantity of milk in the Louisville-Lexington marketing area and to pool plants under this order than in the marketing area under the other order

during each of the preceding three months and does also in the current month. A similar provision is contained in the Ohio Valley order. This provision should be adopted in the consolidated order.

Plants so determined to be subject to another order while disposing of milk in this market should be required to file such reports as the market administrator may require and to allow verification of such reports. Any exception to the described rule of determination should be based on a special determination by the Secretary for the particular plant.

"Producer milk" is a term defined as milk received by handlers from producers in the manner described in the preceding findings with respect to "producer". In the case of any tank truck loads of milk which are split between plants and for which a cooperative association is not the handler, the entire load shall be deemed to have been received at the first pool plant at which milk is withdrawn from the tank truck unless a different arrangement is agreed upon by the operators of the plants.

The definition of the term "fluid milk product" is convenient for establishing the definition of Class I milk and other terms in the order. Because of the relationship of this term to the Class I milk definition, discussion of the fluid milk product definition is covered under the findings and conclusions with respect to classification.

A definition of "other source milk" may be adopted similar to that in the Ohio Valley order, which differs from that in the Louisville-Lexington order only in that it specifically excludes beginning inventory. Bulk tank milk received from a cooperative association for which it is the handler should also be excluded. This term serves to describe a type of milk receipt other than producer milk, milk from pool plants or a cooperative association in its capacity as a pool handler, and beginning inventory of "fluid milk products". It should include receipts of products other than "fluid milk products", including those produced at the plant, which are reprocessed, or converted to another product in the plant during the month.

The definitions of "Chicago butter price" and "nonfat dry milk price" are adopted from the Ohio Valley order.

(b) *Classification and allocation of milk.* Class I milk should be defined as all skim milk and butterfat disposed of as any fluid milk product or which is not accounted for as Class II milk. For this purpose the definition of "fluid milk product" should mean milk, skim milk, buttermilk, flavored milk, milk drinks (plain or flavored), reconstituted milk or skim milk, fortified milk or skim milk (including "diet" foods), cream (sweet or sour), half and half, or any mixture in fluid form of milk or skim milk and cream (except ice cream mix, frozen dessert mix, evaporated milk, condensed milk, aerated cream products, eggnog, and cultured sour mixtures not labeled as Grade A) which are neither sterilized nor packaged in hermetically sealed containers.

Class I milk thus defined includes all fluid products which health authorities in the marketing area generally require to be made from milk from locally inspected sources.

Reconstituted milk and skim milk disposition should be considered as Class I milk utilization. The state of Kentucky requires that nonfat dry milk used in fluid products be of "Grade A" quality. These products compete for the same Class I milk sales as do fresh whole milk or skim milk, and if made from other source milk, could displace producer milk which is available for the same purpose. It is necessary, therefore, that such products be accounted for as Class I milk and in a quantity which includes the normal quantity of water originally associated with the nonfat milk solids. This type of accounting is necessary to return to producers a value commensurate with the Class I utilization of the handler.

Fortified fluid milk drinks, similarly, should be Class I milk to the extent of the weight of an equal volume of milk, skim milk or cream of the same butterfat content. To this extent, such fortified products compete with whole fluid milk, skim milk and cream in the fluid market and tend to displace producer milk from Class I uses if not properly accounted for as Class I milk.

To maintain proper accounting for such items, the nonfat milk solids added to such fortified items should be converted to their fluid skim milk equivalent. The total quantity of product so calculated, which would include the normal quantity of water originally associated with the nonfat milk solids, less the quantity classified as Class I milk, would be accounted for as Class II milk. Proper accounting for all uses of skim milk and butterfat similarly requires that if any of the water contained in the milk from which a product is made is removed, the pounds of skim milk used or disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

Several handler proposals would call for the lowest classification to apply to milkshake mixes containing 15 percent or more of total milk solids and dietary fluid milk products.

"Milk shake mixes" which may be disposed of generally to soda fountains and similar establishments are essentially a form of fortified fluid milk product. Fresh fluid milk provides the liquid portion of the product to which the solids are added. The resulting product is intended for fluid consumption. On this basis milk shake mixes are not distinguishable from other fortified fluid milk products and should be classified in the same manner.

Fluid "diet" milk products similarly are a form of a low-fat milk drink fortified with added nonfat milk solids. Sweetening and flavoring ingredients are also added. The product is prepared by adding the nonfat milk solids and flavoring ingredients to fresh fluid milk or skim milk. Such fluid diet milk products thus are essentially fortified milk drinks

which compete with other fluid milk product disposition. Although standards of identity have not been established by health authorities with respect to "diet" milk products, Grade A milk is used in the preparation of the diet products. It is to be presumed under the circumstances of preparation of the product as described by proponents that they do use and depend on the supply of fresh milk of Grade A quality to provide the fluid part of the product.

It was proposed by Kyana Milk Producers that the consolidated order have only two classes of utilization. The kinds of utilization now included in Class II and Class III in the Louisville-Lexington order would be combined into one class resulting in a Class II milk definition similar to that which applies in the Ohio Valley order. A single price, accordingly, would be established for all reserve milk under the consolidated order. Handler proposals with respect to classification of certain specialty items under a three-class system are interpreted as not being opposed to a two-class system.

It is concluded that a two-class system should be adopted for the consolidated order. This system will tend to provide better marketing opportunities for reserve milk. The single price for all reserve milk will tend to encourage handlers to use the reserve producer milk in the higher-valued uses. It may induce handlers to use greater quantities of producer milk for cottage cheese and ice cream, now priced at the higher Class II price under the Louisville-Lexington order. With respect to ice cream disposition in the marketing area, handlers to a large degree now depend on nonpool sources for their supply of this product. A health requirement of Grade A milk for the manufacture of cottage cheese applies only in Louisville, and, accordingly, cottage cheese from other sources may be distributed in all other parts of the marketing area.

Class II milk should be defined to include all skim milk and butterfat used to produce products not included in Class I milk. Products specifically exempted from the Class I definition such as ice cream mix, frozen dessert mix, evaporated milk, and condensed milk would be Class II milk. Other manufactured dairy products which would be Class II milk include cottage cheese, any other type of cheese, butter, dry milk and nonfat dry milk. Frozen cream is generally a storage item intended for use in ice cream, butter, or other nonfluid use, and is properly a Class II disposition. The proposed two-class system would place eggnog and aerated cream products in Class II. Cultured sour mixtures which include cheese and nondairy food materials are commonly referred to as a "dip" specialty and are not distributed as a Grade A product. Skim milk and butterfat used in these products should be Class II milk if not distributed under a Grade A label.

Class II milk would include fluid product disposition for livestock feed and skim milk dumped upon prior notice product. Skim milk and butterfat used in as prescribed by the market administrator. This is merely a continuance of

the lowest classification under both orders which now applies to such disposition. Also included would be fluid milk products disposed of in bulk to bakeries, candy or soup manufacturers, and other commercial establishments which do not dispose of any of such bulk receipts in the form of fluid milk products. These are ordinarily uses for which manufactured milk products may be used, although disposition from pool plants to such establishments may be most conveniently made in fluid milk product form. Such a classification provision is now contained in the Louisville-Lexington order. Ending inventories of fluid milk products should also be classified as Class II milk for accounting purposes. Inventories of fluid milk products would be subject to reclassification in the subsequent month in the manner now provided in the Ohio Valley order.

Butterfat and skim milk used to produce Class II products should be considered to be classified when so used. Handlers will need to maintain stock records on such products, however, to permit audit of their utilization records by the market administrator. Class II products from any source used in the production of any product, including products in Class I milk, should be considered to be a receipt of other source milk. This will maintain priority of assignment of current receipts of producer milk to Class I utilization.

Loss of skim milk and butterfat in plant operations is commonly referred to as "plant shrinkage". It is also ordinary experience in the case of farm bulk tank milk that there is some handling loss between the aggregate of amounts of milk measured at the farms from which a tank truckload is obtained and the quantity of milk delivered to a plant. Since there must be complete accounting for all milk received from producers, it is necessary that all shrinkage be accounted for as a classified use. Shrinkage should be classified in the lowest class as is presently done under the Louisville-Lexington and Ohio Valley orders. Such classification, in conjunction with reasonable limits, provides an equitable accounting procedure for handlers.

A maximum total shrinkage allowance in Class II of 2 percent will be reasonable in relation to ordinary operating efficiency. This total allowance would be made up of 0.5 percent with respect to milk received from producers and transferred to other handlers, plus 1.5 percent with respect to milk so received but not transferred. The 1.5 percent would also apply to bulk receipts which are transfers from other pool plants or bulk tank milk received from a cooperative association. No shrinkage allowance would apply to milk diverted to nonpool plants. Any shrinkage in excess of these allowances should be classified as Class I milk. These limitations on shrinkage and the attendant method of classification are necessary to protect the classification system from the effects of inadequate records and inefficient handling of milk. These considerations do not require that similar limitations apply to receipts of other source milk.

The shrinkage allowances as described would provide a 0.5 percent allowance to a cooperative association with respect to bulk tank milk for which it is the handler making delivery of such milk to pool plants. This allowance would apply in the absence of notification by the pool plant operator to the market administrator that he is purchasing such bulk tank milk from the cooperative association on the basis of farm weights and tests. If the pool plant operator elects to pay on farms weights and tests, the entire 2 percent shrinkage allowance would be available to him with respect to such milk.

Proration of total shrinkage between pool milk and other source milk received at a pool plant should reflect the varying shrinkage limits just described which may apply to pool milk. Otherwise, a disproportionate share of the total shrinkage could be assigned to pool milk. This situation may be accommodated by prorating the total shrinkage between the maximum pounds of pool milk shrinkage allowable divided by 0.02 and the total pounds of other source milk.

Each handler must be held responsible for a full accounting of all his receipts of skim milk or butterfat in any form. A handler who first receives milk from dairy farmers should be responsible for establishing the classification of, and making payment for, such milk. Fixing responsibilities in this manner is necessary to effectively administer the provisions of the order.

Except for the limited quantities of shrinkage that may be classified in Class II, all skim milk and butterfat for which the handler cannot establish utilization should be classified as Class I milk. This provision is necessary to remove any advantage that might accrue to handlers who fail to keep complete and accurate records and to assure that dairy farmers receive payment for their milk on the basis of its use. Accordingly, the burden of proof should be on the handler to establish the utilization of any milk as other than Class I.

The two present orders apply special classification provisions to fluid milk products transferred and diverted in bulk form from pool plants to other plants. The transfer provisions of the two orders are in many respects similar, allowing for the three-class system in the Louisville-Lexington order as opposed to the two-class system in the Ohio Valley order. The provisions of the Ohio Valley order with respect to classification of such movements of milk to other pool plants or to nonpool plants are adopted as modified by the amendment effective December 1, 1961 (26 F.R. 11284), based on the record of this hearing, and with exceptions as noted herein. These provisions establish rules for assignment of transferred fluid milk products to utilization in the transferee plant. The amendment referred to provides specific rules for milk for which a cooperative association is the handler and which milk is delivered from producers' farms to a handler's pool plant in tank trucks.

Under the order proposed herein, the reference points with respect to dis-

tance of shipments to nonpool plants should be Louisville, Kentucky, and Evansville, Indiana. Nonpool plants located within 250 miles of these two cities will provide sufficient outlets for reserve milk not needed by pool plants, and such distance will appropriately limit imposition of expense upon the market administrator for travel and verification of use of milk at such nonpool plants. Transfers of milk, skim milk, or cream in bulk from pool plants to nonpool plants within such distance would be Class I or Class II according to rules set forth in the attached proposed order which are very similar to the transfer provisions in the present Ohio Valley order. Transfers beyond this distance would be Class I milk. Exception is made, however, with respect to the classification of certain skim milk and butterfat which is transferred from a pool plant to a nonpool plant which disposed of cream for Class II use to a second nonpool plant. Since this involves disposition by the first nonpool plant rather than use in the nonpool plant, a special provision for classification was requested. The second transfer described by proponent would be to a point beyond 250 miles from any of the reference points previously named. Bulk cream transferred from the nonpool plant should be classified as Class II milk in the amount so claimed by the operator of the pool plant if he established that such cream was moved from the nonpool plant without Grade A certification in containers labeled to show that the contents were for manufacturing use only and that such shipment was invoiced accordingly. The pool handler should also afford the market administrator sufficient opportunity to verify such shipments.

Milk transferred from a pool plant to a producer-handler should be Class I milk. To maintain a distinction between producer-handlers and pool plant operators, the definition of producer-handler does not contemplate receipt of milk from farms other than those of the producer-handler. Accordingly, the transfer provisions of the consolidated order should not provide for diversion of milk from producers' farms to producer-handlers.

The procedure for allocating producer milk to Class I and Class II adopted for the order proposed herein is similar to that presently used in the Louisville-Lexington order. However, certain modifications of this procedure are desirable. The proposed order should provide that sour cream and liquid dietary products be assigned to Class I milk (in the amount allowable pursuant to the classification provisions) if they have been classified and priced as Class II milk under the Chicago order and Class I milk under the Cincinnati order, respectively, and are received by pool plants in consumer packages and disposed of in the same packages. A plant which is expected to become fully regulated under the consolidated order presently receives packaged sour cream which has been priced as Class II milk under the Chicago order and distributes it on routes in the same packages. Similarly, a plant regulated under the Louisville-Lexington

order receives packaged liquid dietary products which have been priced as Class I milk under the Cincinnati order and distributes these products on routes in the same packages. Neither of these types of products is produced or packaged in the respective transferee plants. Under the Chicago order, Class II milk is priced at a level generally as high as Class I milk. This method of allocation will accommodate the procurement of specialized products in the manner described by proponents.

A further modification should provide that shrinkage which was "set aside" in the first step of the allocation procedure be "added back" after the assignment of other source milk and beginning inventory but prior to the assignment of inter-handler transfers. This will allow such shrinkage to be allocated to the kinds of receipts for which this shrinkage has been computed.

(e) *Class prices.* In the following findings and conclusions on Class I and Class II prices, reference is made to prices which have prevailed in a number of Federal order markets. For this purpose official notice is taken of price announcements published during the period of March 1960 through October 1961 for each of the months when the order was effective by market administrators for the following markets: Chicago, Cincinnati, Indianapolis, Nashville, Paducah, Suburban St. Louis, and Tri-State. Official notice is also taken of price announcements for the Louisville-Lexington and Ohio Valley markets published by the market administrator for the months of September through December 1961.

Class I price. The Class I price under the new order for milk testing 3.5 percent butterfat should be the sum of a basic formula price plus \$1.25, subject to an adjustment reflecting supply-demand conditions in the market. The Class I price during the period beginning with the effective date of the proposed order through May 1962, however, should not be less than \$4.43. The basic formula price should be the higher of the "Midwest condenseries" price or a butter-powder (spray-roller) formula price. The basic formula prices and the Class I prices should be expressed in terms of milk of 3.5 percent butterfat content.

Kyana Milk Producers proposed that the Class I price for the consolidated order be the sum of a basic formula price plus \$1.40. The basic formula price would be the average price paid for manufacturing grade milk at plants in Minnesota and Wisconsin (hereinafter referred to as the Minnesota-Wisconsin price), as reported by the United States Department of Agriculture, adjusted to a 3.8 percent butterfat basis. A proprietary handler proposed at the hearing that the basic formula price be based on a butter-powder formula.

Most of the Federal milk orders in surrounding markets have basic formula prices which use the higher of the Midwest condenseries price or a butter-powder formula price. Some orders also include the average price at local manufacturing plants as an alternative, but such prices have not been high enough

to be the effective basic formula price. Alignment of Class I prices among the several markets in the region may be more easily maintained by using similar basic formula price alternatives. It is, therefore, desirable to continue the use of the same type of basic formula price as is generally effective in the region unless the Minnesota-Wisconsin manufacturing milk price is adopted as the basic formula price on a regional basis.

Official notice is taken of a notice of hearing issued January 8, 1962 (27 F.R. 314), for 36 markets, including the Louisville-Lexington and Ohio Valley marketing areas on a proposal to use the average price of manufacturing grade milk in Minnesota and Wisconsin, adjusted to 3.5 percent butterfat, as the basic formula price in each of the markets. Such hearing was held in Chicago, Illinois, January 17, 18, and 19, 1962. The consolidated order here under consideration, when issued, should reflect the determinations made on the basis of the Chicago hearing record.

The Midwest condenseries price and the butter-powder formula price adopted herein as the basic formula price alternative are the same as those now included in the Louisville-Lexington and Ohio Valley orders. The Louisville-Lexington order also includes as an alternative the average price of seven local manufacturing plants. In view of the continued ineffectiveness of the local manufacturing plant price in the basic formula price, it is not included as part of the basic formula price in the consolidated order.

The present stated differential of \$1.25 should be continued. A Class I price differential is only part of the Class I pricing mechanism, and its proper amount should be judged on the basis of its influence upon the resulting level of price. In view of the increasing volume of milk supplied as compared to Class I sales of handlers in the two markets, it is unnecessary that any increase in the price level be provided through raising the Class I price differential. The present \$1.25 differential provides a good basis for maintaining price alignment with nearby markets. The annual levels of Class I price differentials in nearby markets are as follows: Cincinnati, \$1.30; Indianapolis, \$1.25; Paducah, \$1.30; and Nashville, \$1.35.¹ Though the Suburban St. Louis order does not use a Class I price differential, its Class I price does reflect (for base zone) a differential over the Chicago order basic formula price of \$1.30, subject, however, to the supply-demand adjustments in the Chicago and St. Louis orders.

A supply-demand adjuster similar to that now used in the Louisville-Lexington order should be adopted. This adjuster should be modified in that the standard utilization percentage should be raised from 137 to 144. It should also be limited in its operation so that the adjustment from one month to the next would not exceed four cents.

¹ A location differential deduction of 10 cents applies at plants in Kentucky 50 miles or more, but less than 70 miles from Nashville.

The provisions of the Agricultural Marketing Agreement Act require that prices established by milk orders reflect supply and demand conditions for milk in the market. While many of the elements of supply and demand on a national scale are reflected in the basic formula price, this pricing mechanism does not assure that all local factors will be reflected in the Class I price. In the Louisville-Lexington market the substantial changes in recent years in the ratio of producer milk supplies to Class I disposition show that this relationship is significant and should be considered in the establishment of the Class I price. In the Ohio Valley market it is clear that the similarity of marketing conditions and the inter-relationships which have led to the consideration of consolidating the two markets argue that the relationship of producer milk supplies to Class I disposition is similarly significant for the proposed combined market.

For a recent 12-month period (November 1960 through October 1961), the average of the monthly ratios of producer receipts to gross Class I utilization for the Louisville-Lexington market was 150, such ratios ranging from a low of 121 in November 1960 to a high of 175 in June 1961. A review of preceding years shows that for the same monthly periods the average production-Class I disposition ratios were 142 for the 1955-1956 period, 147 for the 1956-1957 period, 141 for the 1957-1958 period, 135 for the 1958-1959 period, and 134 for the 1959-1960 period.

For the Ohio Valley market, data for similar 12-month periods are not available, because the order first became effective March 1, 1960. The longest comparable periods for purposes of comparison are March through October of each of the years of 1960 and 1961. The average of the monthly ratios of producer receipts to gross Class I utilization for the periods of March through October of 1960 and 1961 for the Ohio Valley market were 125 and 136, respectively.

The increases shown in the production-sales ratios in the Louisville-Lexington market since 1960 have been due to the substantial increases in production. Although production figures reflect the increase resulting from the expansion of the marketing area on March 1, 1960, it is clear that production has increased considerably more in this market than have the corresponding Class I sales. Also the average daily production per farm has increased from an average of 577 pounds to an average of 624 pounds between these periods. In the Ohio Valley market, the increase in the production-sales ratio was a result of both a decrease in Class I sales and an increase in production. During the March-October period of 1961, Class I sales were 4 percent less while production was 4.3 percent more as compared to the same period in 1960. The average daily production per farm for this market increased from an average of 502 pounds to an average of 556 pounds between these periods. (Official notice is taken of market statistics published monthly for the Louisville-Lexington and Ohio Valley Federal milk orders by the mar-

ket administrator for the months of August through November 1961.)

With the prices which have prevailed the supply of milk has increased relative to sales. Therefore no increase in price is warranted at this time. In order to properly reflect future changes in the local supply and demand conditions a supply-demand adjuster of the type contained in the Louisville-Lexington order is adopted with some modifications as explained in subsequent findings and conclusions.

A new standard annual level of utilization should be adopted for the supply-demand adjustment computation. The standard annual utilization percentage (137 percent) which was adopted in the Louisville-Lexington order by amendment effective March 1, 1960, has not appropriately reflected recent market conditions and thus has not provided a suitable basis on which to make supply-demand price adjustments. Suspension and amendment actions have been taken which have limited the full effect of the supply-demand adjuster in all but the initial month of its operation, May 1961.² A new standard for the consolidated order should be established at a level such that the average Class I price currently effective in the two markets would result from the application of such a new standard in relation to the current level of utilization.

A standard utilization percentage of 144 will maintain an average price for the combined area equal to the price (\$4.431) which has prevailed in the two markets during the six-month period of July through December 1961. For this period the average Class I price on a 3.5 percent butterfat basis under the Ohio Valley order, using a differential of \$1.253 over the basic formula price, would have been \$4.558. The average Louisville-Lexington order Class I price for the same six-month period, on a 3.5 percent butterfat basis, was \$4.376. A weighted average of these prices, using the average proportionate volumes of Class I milk in the respective markets in the period June through November 1961, results in an average of \$4.431. Prices in each market were very stable in this period, and the average for the six months is very close to the average of the two markets in each of the six months.

Such an application of the supply-demand adjuster will allow continuation of the same average level of price of the two markets as has existed in recent months, subject to further adjustments based on future changes in the market situation. The price level herein proposed will result in a lower price for farmers who have been producers under the Ohio Valley order, as a result of the averaging of the prices of the two markets. Evidence with respect to changing supply conditions in the Ohio Valley market shows that the reduction in the applicable Class I price is in accord with the changes in mar-

ket conditions. Such changing market conditions would need to be recognized in the price for that marketing area regardless of whether the two markets are combined.

To assure additional stability in price changes produced by the supply-demand adjuster, it is provided that the price adjustment for any one month shall not differ from that of the previous month by more than 4 cents per hundredweight. The total amount of adjustment should not at any time exceed 50 cents.

Producer and handler groups both asked that no supply-demand provision be included in the new order, and further asked that if such a price adjuster is included, that it be moderate and limited in its effect. Two handlers asked that the effective date of a supply-demand adjuster be delayed until after 18 months of experience under the new order. Producers proposed specifically (1) that any negative price adjustment be limited to 6 percent of the average basic formula price for the previous year; (2) that the measure of the relationship of supplies to Class I disposition be based on two twelve-month moving averages such as in the St. Louis order; (3) that the Class I disposition used in the calculation include sales by nonpool plants in the marketing area; and (4) that any supply-demand adjuster not result in a price change as long as Class I disposition is 67 percent or more of producer milk or less than 71 percent.

The proposals that no supply-demand adjuster apply under the new order are denied on the basis of preceding findings and conclusions. The effective date of a supply-demand adjuster should not be delayed for an 18-month period as requested by producers and handlers. The substantial changes in the supply-demand situation in recent years require that these conditions be reflected in the Class I price under the new order as soon as possible.

The type of supply-demand adjuster used in the Louisville-Lexington order is preferable to that proposed by producers based on two twelve-month moving averages, since it will react more promptly to recent conditions in the market. The method of calculation of the supply-demand adjustment under the Louisville-Lexington order is explained in the decisions issued February 8, 1960, and July 18, 1961. Essentially, it provides for calculation of the percentages that producer milk is of gross Class I utilization of pool plants in the three most recent two-month periods for which data are available. Comparison of these two-month percentages with seasonally adjusted standards provides the basis for Class I price adjustments. Seasonal adjustment of the annual standard is based on supply and utilization data for the 37-month period ending with the second month preceding the month for which the price adjustment is computed. Price stability is achieved by eliminating indicated adjustments if they are in a direction opposite from that indicated by the most recent two-month percentage and elim-

² See suspension orders issued May 25, 1961 (26 F.R. 4734) and December 13, 1961 (26 F.R. 12110), and final decision issued July 18, 1961 (26 F.R. 6547).

inating indicated adjustments in excess of the most recent percentage.

Inasmuch as the Ohio Valley order was issued effective March 1, 1960, data on a 37-month basis for plants regulated under that order would not be available until after March 1963. Since, however, the calculations depend entirely upon ratios (in some cases expressed as percentages) of quantities of producer milk to Class I utilization, the changes in marketing area do not prevent use of currently available data for calculation of a supply-demand adjustor. The month of June 1962, would be the first month for which a price adjustment could be computed if two full years of data for the Ohio Valley market are included. The effect of the supply-demand adjustor adopted herein is accordingly limited prior to June 1962 by establishing a minimum Class I price of \$4.43.

The proposal to retain all Class I sales in the marketing area in the supply-demand computation, regardless of whether such sales are by pool plants or nonpool plants is denied. Such a provision would be insensitive to the competition of handlers regulated under other orders who may secure sales outlets in this market. The levels of the Class I price in this market should reflect loss of sales by pool plants in such circumstances as a part of the supply-demand situation affecting the marketing of producer milk.

Class prices under the proposed order are expressed in terms of milk testing 3.5 percent butterfat. This is done for the purpose of achieving uniformity among markets so that prices will be readily comparable to all interested parties. This need not affect the butterfat content of milk received or disposed of under the order. This change in the method of quoting the Class I price has been accomplished by changing the butterfat value included in the basic formula prices to reflect the 3.5 percent butterfat test.

Class II price. Class II milk under the consolidated order should be priced for the months of September through March at the average price per hundred-weight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the United States Department of Agriculture, adjusted to a 3.5 percent butterfat basis, and for the months of April through August at such price less 10 cents.

The Louisville-Lexington order presently provides two separate prices for milk going into manufacturing uses. The Class II price, applicable primarily to cottage cheese and ice cream, is the highest of four alternative prices. These are the Midwest condenseries price, a butter-powder (spray-roller) formula price, a butter-powder (spray) formula price, or a butter-cheese formula price. The Class III price applies primarily to American cheese, butter, dry milk powder, and condensed milk. For the months of September through March this price is the higher of a butter-powder (spray-roller) formula price or the average announced price at seven local manufacturing plants. For the re-

maining five months of the year the Class III price is the higher of a butter-powder (roller) formula price or the average local manufacturing plants price.

The Ohio Valley order presently provides one classification (Class II) for all milk going into manufacturing uses. For the months of September through February Class II milk is priced at the higher of the Midwest condenseries price or a butter-powder (spray-roller) formula price. For the months of March through August such milk is priced at the average announced price at five local manufacturing plants plus 20 cents.

Previous reference has been made in this decision to the cooperative association's proposal that the consolidated order use a two-class system under which all milk going into manufacturing uses would be Class II milk. In conjunction with this arrangement they proposed that the price for Class II milk be the Minnesota-Wisconsin manufacturing milk price, adjusted to a 3.8 percent butterfat basis by the butterfat differential resulting from multiplying the Chicago butter price by 0.12. A representative of a dairy firm which operates unregulated manufacturing plants located in and around the Louisville-Lexington and Ohio Valley marketing areas proposed at the hearing that if the Minnesota-Wisconsin price were used as a basis for pricing milk going into manufacturing uses the order price should be 15 cents less than the Minnesota-Wisconsin price adjusted to a 3.8 percent butterfat test. A group of proprietary handlers regulated under the Louisville-Lexington order proposed that the Class II price under that order be amended to delete the butter-cheese formula price from the list of Class II price alternatives.

The price for manufacturing grade milk in the two-State area of Minnesota and Wisconsin is issued by the State-Federal Crop Reporting Service on about the 5th day of each month for milk received at manufacturing plants in these States in the previous month. Plant operators report the total pounds of manufacturing grade milk received from farmers, the butterfat content, and total money paid to farmers for the milk delivered at their plants. The two-State area is one in which there is a heavy concentration of manufacturing grade milk and where many plants are competing for such a supply. In Minnesota about 80 percent of the milk sold off of farms is manufacturing grade and in Wisconsin, about 65 percent. About 50 percent of the total manufacturing grade milk sold off farms in the United States is produced in these two States.

Comparisons made herein between the proposed Class II price formulas and the formula prices under the two orders exclude the effect of the butter-cheese formula price under the Louisville-Lexington order. In a decision issued by the Secretary on July 18, 1961 (26 F.R. 6547), based on a public hearing held May 22, 1961, it was concluded that the butter-cheese formula price should be removed from the list of price alternatives in the basic formula price of the Louisville-

Lexington order. It was concluded that the butter-cheese formula price had increased to levels representing improper relationships to other measures of the value of manufacturing milk used in this and nearby order markets for basic formula prices. In view of this it is appropriate that comparisons of proposed formulas for pricing reserve milk with current formulas in effect in the two orders not reflect the butter-cheese formula price. When the order was amended August 1, 1961, this formula price was retained as part of the Class II pricing mechanism, however, because the Class II price was not an issue at the hearing.

For the 12-month period of November 1960 through October 1961 the Class II price in the Louisville-Lexington order, without the effect of the butter-cheese formula price, averaged \$3.37 for milk testing 3.5 percent butterfat. The Class III price for the same period averaged \$3.14 for milk of 3.5 percent butterfat content. The comparable Ohio Valley Class II price averaged \$3.19. The Minnesota-Wisconsin manufacturing milk series adjusted to a 3.5 percent butterfat basis using the butterfat differential as proposed by producers would have averaged \$3.26. The proposal made by the operator of nonpool manufacturing plants that the Class II price be 15 cents less than the Minnesota-Wisconsin series would have resulted in an average Class II price for this period three cents lower than the average Louisville-Lexington Class III price. A representative of this firm testified, however, that these plants paid ungraded shippers premiums which resulted in prices 10 to 15 cents over the Class III price.

For the period since the Ohio Valley order has been in effect (March 1960 through October 1961) the combined returns to producers under both orders for milk other than Class I, excluding the effect of the butter-cheese formula price, averaged \$3.13 for milk at 3.5 percent butterfat test. The Minnesota-Wisconsin manufacturing milk price during this period averaged \$3.19 for milk of the same test.

The pricing formulas for reserve milk under the two orders provide seasonal variation by using different price factors for Class III milk under the Louisville-Lexington order (April through August) and Class II milk under the Ohio Valley order (March through August) for the months of heavier milk production. These seasonal changes in the formulas for reserve milk prices would normally produce greater seasonal variation than there might be in the Minnesota-Wisconsin manufacturing milk prices. For milk of 3.5 percent butterfat test during the periods of April through August 1960 and 1961, the Minnesota-Wisconsin price averaged 21 cents over the Louisville-Lexington Class III price and 17 cents over the Ohio Valley Class II price. In the intervening period of September 1960 through March 1961 the Minnesota-Wisconsin price averaged 10 cents over the Louisville-Lexington Class III price and 2 cents under the Ohio Valley Class II price. In the period September 1959 through March 1960 the Minnesota-Wis-

consin price averaged one cent under the Louisville-Lexington Class III price.

It is concluded that some seasonal adjustment of the Minnesota-Wisconsin manufacturing milk price would be necessary to properly reflect the seasonal marketing conditions affecting reserve milk in this market. The evidence does not establish, however, that the general level of price for reserve milk should be substantially different from average levels which have prevailed for the combined area. Experience in recent years has been that reserve milk readily moved to manufacturing outlets without evidence of distressed sales. On the other hand, the price levels have not induced pool plants to accumulate unneeded supplies intended primarily for manufacturing. In order to promote the orderly handling of reserve milk for the proposed consolidated marketing area, including adjustment for the seasonal changes in quantities of reserve milk and prices at which it can be disposed of, it is concluded that a formula (including seasonal adjustments) which would have yielded in the March 1960 through October 1961 period about the same average return as prevailed in the two-market area (excluding the effect of the butter-cheese formula price) should be adopted. Of the various formulas proposed, the Minnesota-Wisconsin series represents the best index of changing values of manufacturing milk based on prices which competing manufacturing plants offer for milk of manufacturing grade. Such paying prices reflect the supply and demand of manufactured dairy products within a highly co-ordinated marketing system which is national in scale. It is concluded that a price for reserve milk within the purposes expressed in the preceding discussion will be provided by use of the Minnesota-Wisconsin price subject to a seasonal deduction of 10 cents for the months of April through August.

During the 20-month period of March 1960 through October 1961 this price formula for milk testing 3.5 percent butterfat would have averaged \$3.14 per hundredweight. For the same period the average of prices under the two orders for milk other than Class I milk (excluding the effect of the butter-cheese formula) was \$3.13 for milk of the same test. This average reflects in each month the relative quantities of milk in each class under each order.

The announced average price paid by the Minnesota and Wisconsin plants is at the weighted average butterfat test of the milk received at these plants. Since it is concluded in this decision that the consolidated order prices should be announced on a 3.5 percent butterfat basis, it is necessary that the announced Minnesota-Wisconsin prices be adjusted to this basis. The cooperative association proposed that adjustment of these prices be made by using a differential equal to the average quotation for the month for Grade A (92-score) butter at Chicago times 0.12. This differential is presently used as butterfat differentials under both orders in pricing Class II and Class III milk and should likewise be used in the consolidated order for adjusting

the announced Minnesota-Wisconsin price to a 3.5 percent butterfat basis.

Butterfat differentials. The prices paid by handlers for Class I milk should be subject to a butterfat differential for each one-tenth of one percent of butterfat content equal to 0.125 times the Chicago butter price of the preceding month. This is the same differential which now applies under the Louisville-Lexington order and which closely approximates the average of differentials which apply under the Ohio Valley order. The Class II price should be adjusted by a butterfat differential equal to 0.120 times the Chicago butter price of the month in which the milk was received. This differential is the same as currently applies in the Ohio Valley order and is slightly higher than the differentials which apply to Class II and Class III milk under the Louisville-Lexington order. It is concluded that these differentials will properly reflect the value of butterfat as used by handlers in the respective classes.

Location differentials. A system of location differentials similar to those which apply to the Class I prices under the present two orders should be adopted but should be modified in relation to the extent of the enlarged marketing area for the proposed consolidated order. Location differentials should apply to Class I milk at plants which are located more than 85 miles from the nearest of the following points: The City Halls in Lexington, Louisville, Madisonville, Elizabethtown and Danville, in Kentucky, and Evansville in Indiana.

In the Louisville-Lexington order, the basing points for location differentials are the City Halls in Louisville and Lexington, whichever is nearer to the plant at which the milk is received from producers. No location differential applies at plants located less than 85 miles from such points. For plants 85 miles or more but less than 95 miles from such points, a location differential of 15 cents per hundredweight is provided, and for greater distances an additional adjustment of 1.5 cents for each additional 10 miles. In the Ohio Valley order the County Courthouses in Evansville, Indiana, and Owensboro, Kentucky, are used as points of reference. For plants located 80 miles but less than 90 miles from such points, an adjustment of 13 cents per hundredweight is deducted, and for distances beyond this, 1.5 cents is deducted for each additional 10 miles.

The evidence with respect to cost of transporting milk does not justify any significant departure from the rates of location differentials used presently in the Louisville-Lexington order. The initial distance of 85 miles from the selected points of reference, which now applies in the Louisville-Lexington order, is adopted herein to apply to the several points of reference in the enlarged marketing area. Additional basing points should be designated at the following locations in the marketing area: Madisonville, Elizabethtown and Danville, Kentucky. These new basing points will provide a better system of location differentials with respect to plants in Southern Kentucky located close to the

marketing area and will result in better alignment of prices with prices in nearby Federal order markets. The basing point at Owensboro, Kentucky, will then be unnecessary, and is eliminated.

For plants located beyond 85 miles but less than 95 miles from the reference points named, a location adjustment of 15 cents should apply, and for distances beyond this an additional adjustment of 1.5 cents for each 10 miles should apply. These rates are the same as now apply in the Louisville-Lexington order.

(d) Payments with respect to unpriced milk. For effective regulation it is necessary that the order provide for payments to the producer-settlement fund with respect to other source milk allocated to Class I milk at pool plants. Payments should also be made by operators of nonpool plants which dispose of Class I milk on routes in the marketing area.

For purposes of the proposed order, provisions for such payments similar to those of the Louisville-Lexington order are adopted. Under that order, compensatory payments into the producer-settlement fund are required to be made by nonpool plants disposing of Class I milk in the marketing area, such payments to be made, however, under one of two options. Under one option, the payment is based on the quantity of Class I milk disposed of in the marketing area by the nonpool plant, allowing credit, however, for milk which is received by the nonpool plant from pool plants and which is classified as Class I milk. The per hundredweight rates of payment required for the months of January through September are the difference between the Class I price and the Class III price, and for other months, the difference between the Class I price and the uniform price. The prices used in the calculation are subject to appropriate location and butterfat differentials. These rates of payment are deemed necessary to offset the advantage nonpool handlers would otherwise have in using unregulated milk for Class I disposition in the marketing area.

Under the second option, the operator of the nonpool plant may elect that his obligation to the producer-settlement fund be computed as the difference between what his obligation for all milk handled would be if his plant were a pool plant (subject to specified rules with respect to interplant transfers) and the amount of his payments to farmers whose milk production is qualified for the fluid market. In this computation allowance is made for any obligations incurred by the same plant under other orders.

The compensatory payment provisions of the Ohio Valley order are quite similar. The Ohio Valley order differs in that the rate of payment under the first option is the difference between the Class I price and the uniform price in the months of August through March rather than October through December. Another difference is that the Ohio Valley order does not allow credit for Class I milk received at the nonpool plant from a pool plant.

Parties at the hearing requested certain modifications of the system used in the Louisville-Lexington order. One handler asked that under the new order the rate be the difference between the

Class I price and the Class II price in all months. Two handlers asked that credit not be allowed for receipt of Class I milk at a nonpool plant from a pool plant. A nonpool plant operator proposed that credit be allowed to a pool plant operator for compensatory payments under another order on milk disposed of in the marketing area under that order from a nonpool plant also operated by the same handler and to which the pool plant supplied milk. Proponent of the latter proposal did not testify at the hearing and information in the record does not provide a basis for judging the merits of the proposal. A further proposal would have required that crediting of receipts of pool Class I milk, in computing the compensatory payment obligation of a nonpool plant, be allowed only if the nonpool plant paid a price for such milk equal to the Class I price plus 45 cents. This was intended to offset an advantage proponent claimed that nonpool plants have in paying their farmers in the months when order blend prices are reduced by the seasonal incentive plan.

The rates of payment needed to offset the advantage in use of unpriced milk are those now applicable under the Louisville-Lexington order. The seasonal changes in these rates represent the seasonally changing values of other source milk which might be obtained for Class I use in the proposed marketing area. The additional option presently provided in the two orders should be continued. This optional computation is that based on the obligation which would apply if such plant were a pool plant, less payments by the plant operator to dairy farmers who constitute the plant's supply for fluid market disposition. The basis for the several compensatory payment provisions discussed herein have been set forth in prior decisions on these orders. It is concluded here that the findings and conclusions of such decisions apply appropriately to the proposed order.

The provisions of the proposed order do not require compensatory payments on milk classified and priced as Class I milk under another Federal order. Under the requirements of the Act, prices in every order must be established according to the supply and demand conditions of the market which necessarily include price relationships with other markets. Accordingly, prices in this market should be in alignment with prices of other Federal order markets, thus preventing any price advantage that needs to be offset with respect to use of other source milk priced as Class I milk under another order.

The application of regulation to an enlarged marketing area, and adoption of pool plant provisions providing for more inclusive regulation than under the Ohio Valley order, are expected to reduce the quantity of other source milk disposed of in the marketing area. In view of these changes, the more stringent requirements proposed by handlers are considered unnecessary. Production areas of plants which would be fully regulated and of those which might be partially regulated by virtue of disposition in the marketing area do not over-

lap to a degree such that nonpool plants could obtain a competitive procurement advantage under the system of compensatory payments adopted herein.

All funds collected from such compensatory payments should be added to the producer-settlement fund. The handler receiving other source milk on which a payment accrues should be obligated to make the compensatory payments to the producer-settlement fund. There will be no difference in actual amount so paid for milk whether the payment is required of the handler or of the operator of the unregulated plant from which the other source milk was obtained. Because the handler makes the actual distribution of the milk in the marketing area, and because he reports the utilization to the market administrator, he is, from an administrative view, the logical person to make the payment.

(e) *Payments to producers.* The payment provisions contained in the proposed order are in the same form as such provisions of the Louisville-Lexington order except for minor changes. The butterfat differential applicable to the uniform price should be an average of the Class I and Class II butterfat differentials weighted by the quantities of butterfat in producer milk classified in each class. These butterfat differentials were proposed by the producer association. It has been concluded in the foregoing considerations that the proposed Class I and Class II butterfat differentials will provide proper pricing of butterfat in relation to its value in the respective classes. The proposed producer butterfat differential will serve to distribute to producers a return for the butterfat content of their milk in line with average classified utilization by handlers.

Location differentials should apply to uniform prices to producers according to the location of plants at which producer milk is received (or delivered in the case of bulk tank milk for which a cooperative association is the handler). This differential should be at the same rate as the Class I location differentials so as to properly reflect the value of producer milk for the fluid market.

Producers requested that the fall production incentive program now operating in the Louisville-Lexington market be continued under the proposed order for the enlarged area. This seasonal pricing plan is preferred by producers over the base-excess plan in the Ohio Valley order. The fall production incentive plan is retained in the proposed order as a means of stabilizing the seasonal variations of production. Testimony on behalf of producers held that the change in the plan applicable to the present Ohio Valley producers would have little, if any, effect on the annual income of such producers.

Producer representatives maintained, however, that participation of producers in the fall premium payments in the months of September through December should be limited to producers who have made a proportionate contribution in the preceding spring and summer months of April through July. Concern was expressed with respect to the possibility of large groups of producers being shifted

from nearby markets to this market in the fall period.

This proposal conflicts with the purpose of the fall premium plan as part of a Federal milk order. The plan is a method of inducing farmers to produce milk for the market in a more even pattern throughout the year. The money collected in the months of April through July is an accumulation of payments from handlers and does not represent contributions by producers. The money is held in the producer-settlement fund until it is distributed to producers in the fall months. This fund of money must necessarily be paid out on all milk of dairy farmers who have been determined to qualify as producers in the fall months. To do otherwise would require discrimination among qualified producers with respect to pricing. The record does not present a basis which could justify such discrimination.

(f) *Administrative and miscellaneous provisions.* The Class I price and butterfat differential should be announced on the 8th day of the month. This is the date of announcement presently used under the Ohio Valley order and will provide earlier information to the market than the Louisville-Lexington order provision. On the same date the Class II price and butterfat differential of the preceding month should be announced. The uniform price to producers for milk received in the previous month should be announced on or before the 12th day of the month.

Reports on receipts and utilization of milk handled during the month should be due at the office of the market administrator on the 8th day after the end of such month. Handlers should be notified of their obligations on the 13th day after the end of the month. Payments to producers should be made on or before the last day of the month for milk received during the first 15 days of the month at a rate not less than the Class II price for 3.5 percent milk of the preceding month and without adjustment for butterfat content and hauling. Final payment should be made to producers on or before the 17th day following the month in which the milk was received. Payments to a cooperative association for member milk would be required two days earlier.

Payroll reports should be submitted by handlers on or before the 20th day following the end of the month. The proposed order continues the provision now contained in both orders requiring the market administrator on or before the 15th day after the end of the month to report, upon request, to a cooperative association the percentage of milk used in each class by each handler to which the association or member delivered milk.

Both orders now provide for deductions from payments to producers of money to be used by the market administrator for certain marketing services. These include providing market information to producers, verification of weights, and sampling and testing of milk received from producers for whom such services are not being rendered by a qualified cooperative association. The rate of deduction is five cents per hun-

dredweight under the Louisville-Lexington order and six cents under the Ohio Valley order. Under the proposed order the rate now applied in the Louisville-Lexington order should be sufficient to cover such expense. In lieu of these deductions, the order would require payments to a qualified cooperative association determined to be providing such services for producers. The rate of such payments would be according to the authorization given by the producer.

For expense of administration, the Louisville-Lexington order requires payments at the rate of 3 cents per hundredweight while the rate under the Ohio Valley order is 4 cents. The three-cent rate should apply under the new order. Handlers operating pool plants would be obligated to pay such rate with respect to milk received there from producers or from a cooperative association acting as a handler on bulk tank milk it causes to be delivered from the farm to such plant. Milk diverted by a handler (including a cooperative association) would also be subject to such a payment. Payment would be required on other source milk received by a pool plant and assigned to Class I milk. Nonpool plant operators would be required to pay an administrative assessment in amounts depending on their choice of option with respect to meeting their obligations to the producer-settlement fund. If the nonpool plant operator elects to make payment to the producer-settlement fund on the amount of Class I milk disposed of in the marketing area, his payment for expense of administration would be on such amount, allowing credit, however, for milk received from pool plants which is classified as Class I milk. If the nonpool plant operator elects to have his obligation computed at the difference between his payments to his qualified dairy farmers who constitute his Grade A milk supply and the amount which would be his obligation as a pool plant operator, then his obligation for administrative expense would be based on his entire receipts of Grade A milk from dairy farmers and any other receipts allocated to Class I milk, with allowance, however, for similar payments under another Federal order.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and

affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended marketing agreement and order amending the orders. The following order amending the orders regulating the handling of milk in the Louisville-Lexington, Kentucky, and Ohio Valley marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the amended orders, as hereby proposed to be amended:

DEFINITIONS

§ 1046.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 1046.2 Secretary.

"Secretary" means the Secretary of Agriculture or any other officer or employee of the United States authorized to exercise the powers or to perform the duties pursuant to the Act of the said Secretary of Agriculture.

§ 1046.3 Department.

"Department" means the United States Department of Agriculture or other Federal agency authorized to perform the price reporting functions specified in this part.

§ 1046.4 Person.

"Person" means any individual, partnership, corporation, association or any other business unit.

§ 1046.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

§ 1046.6 Louisville-Lexington-Evansville marketing area.

"Louisville-Lexington-Evansville marketing area", hereinafter called the "marketing area", means all territory geographically located within the perimeter boundaries of Anderson, Bourbon, Daviess, Fayette, Franklin, Garrard, Grayson, Hancock, Hardin, Henderson, Henry, Hopkins, Jefferson, Jessamine, Larue, Madison, McLean, Meade, Mercer, Montgomery, Muhlenberg, Nelson, Ohio, Oldham, Scott, Shelby, Spencer, Union, Webster, and Woodford Counties in the State of Kentucky, and Clark, Crawford, Daviess, Dubois, Floyd, Gibson, Harrison, Knox, Martin, Orange, Perry, Pike, Posey, Spencer, Vanderburgh, Warrick, and Washington Counties in the State of Indiana, including all municipal corporations and institutions owned or operated by the Federal, State or local governments lying wholly or partially within such territory.

§ 1046.7 Producer.

"Producer" means any person, except a producer-handler:

(a) Who produces milk on a dairy farm which is approved by a duly constituted health authority for the production of milk for fluid disposition (this definition shall include approval of milk by the authority to administer the regulations governing the quality of milk acceptable to agencies of the U.S. Government for fluid consumption in its institutions or bases located in the marketing area during any month in which such milk is disposed of to such institutions or bases); and

(b) Whose milk so produced pursuant to paragraph (a) of this section is received at a pool plant or by a cooperative association in its capacity as a handler pursuant to § 1046.8(c) or diverted in accordance with the conditions set forth in § 1046.14.

§ 1046.8 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a city plant or a country plant;

(b) Any cooperative association with respect to milk diverted by it in accordance with the conditions set forth in § 1046.14; and

(c) Any cooperative association with respect to the milk of its producer members which is delivered for the account of the cooperative association from the farm to the pool plant(s) of another handler in a tank truck owned by, operated by, or under contract to such cooperative association if the cooperative association has notified in writing prior to delivery both the market administrator and the handler to whom the milk is delivered that it wishes to be the handler for such milk. Such milk shall be

considered as having been received by the cooperative association at the location of the plant to which it was delivered.

§ 1046.9 Producer-handler.

"Producer-handler" means any person who processes and packages milk from his own farm production, distributes any portion of such milk in the marketing area on a route and receives no fluid milk products from other dairy farmers or nonpool plants: *Provided*, That such person provides proof satisfactory to the market administrator that (a) the care and management of all of the dairy animals and other resources necessary to produce the entire amount of fluid milk handled (excluding transfers from pool plants) is the personal enterprise of and at the personal risk of such person, and (b) the operation of the processing and distributing business is the personal enterprise of and at the personal risk of such person.

§ 1046.10 City plant.

"City plant" means a plant where milk is processed or packaged and from which fluid milk products permitted to be labeled as "Grade A" by a duly constituted health authority are disposed of on a route(s) in the marketing area.

§ 1046.11 Country plant.

"Country plant" means a milk plant, other than a city plant, which is approved by a duly constituted health authority to supply milk, skim milk or cream to a city plant(s) for disposition as "Grade A" milk and at which milk is received during the month from persons described in § 1046.7(a) or from a cooperative association in its capacity as a handler pursuant to § 1046.8(c).

§ 1046.12 Pool plant.

"Pool plant" means:

(a) A city plant, other than a plant operated by a producer-handler, which meets the following requirements:

(1) For each of the months of May through October not less than 30 percent and for each of the months of November through April not less than 50 percent of the fluid milk products received during the two months immediately preceding from persons described in § 1046.7(a), from a cooperative association in its capacity as a handler pursuant to § 1046.8(c), from country plants and from pool plants in containers not larger than a gallon are disposed of as Class I milk from such plant during such two-month period to all outlets except such disposition to pool plants in containers larger than a gallon: *Provided*, That, if such utilization percentage for the two preceding months cannot be ascertained by the market administrator, the respective percentages shall apply to receipts and sales during the current month; and

(2) An amount of Class I milk equal to not less than an average of 13,500 pounds per day or not less than 10 percent of the fluid milk products received during the current month from persons described in § 1046.7(a), from a cooperative association in its capacity as a handler pursuant to § 1046.8(c), and from

country plants is distributed on routes in the marketing area;

(b) A country plant during any of the months of October through March from which not less than 50 percent, and during other months not less than 40 percent, of the receipts of milk at such plant from persons described in § 1046.7(a) and from a cooperative association in its capacity as a handler pursuant to § 1046.8(c) are moved to and received at a city plant in the form of milk, skim milk or cream;

(c) A country plant during the months of April through September from which not less than 50 percent of the combined receipts of milk from persons described in § 1046.7(a) and from a cooperative association in its capacity as a handler pursuant to § 1046.8(c) during the preceding period of October through March were moved to and received at a city plant(s) in the form of milk, skim milk, or cream, unless the operator of such plant notifies the market administrator in writing on or before March 15 of withdrawal of the plant from the pool for the months of April through September next following; and

(d) A country plant which is operated by a cooperative association if (1) two-thirds or more of the milk from persons described in § 1046.7(a) who are members of such association is delivered during the month from farms to the pool plant(s) of other handlers or transferred by such association from its plant to the pool plant(s) of other handlers or (2) such plant qualified as a pool plant pursuant to subparagraph (1) of this paragraph during each of the immediately preceding consecutive months of October through February.

§ 1046.13 Nonpool plant.

"Nonpool plant" means any milk manufacturing, processing or bottling plant other than a pool plant.

§ 1046.14 Producer milk.

"Producer milk" means only that skim milk and butterfat contained in milk from producers which is:

(a) Received from producers at a pool plant for the account of the person operating such plant: *Provided*, That, in the case of milk other than that delivered by a cooperative association pursuant to § 1046.8(c), when withdrawals of milk are made at more than one pool plant from the same load delivered by farm tank pickup truck and in the absence of agreement between the operators of such pool plants as to the reporting of and payment for such milk, the entire load shall be deemed to have been received at the first pool plant at which any of such milk was withdrawn;

(b) Diverted from a pool plant to a nonpool plant for the account of the operator of the pool plant or for the account of a cooperative association: *Provided*, That such milk so diverted shall be deemed to have been received at the pool plant from which it is diverted if diverted for the account of the handler operating such plant or at the location of the pool plant from which diverted if diverted for the account of a cooperative association: *And provided further*, That producer milk pursuant to this para-

graph shall not include the milk of any person during any of the months of October, November, January and February on days on which it is diverted by a handler to a nonpool plant in excess of one-half of the number of days of delivery during the month; or

(c) Received by a cooperative association in its capacity as a handler pursuant to § 1046.8(c).

§ 1046.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, milk drinks (plain or flavored), reconstituted milk or skim milk, fortified milk or skim milk (including "diet" foods), cream (sweet or sour), half and half, or any mixture in fluid form of milk or skim milk and cream (except ice cream mix, frozen dessert mix, evaporated milk, condensed milk, aerated cream products, eggnog, and cultured sour mixtures not labeled as Grade A) which are neither sterilized nor packaged in hermetically sealed containers.

§ 1046.16 Other source milk.

"Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month in the form of fluid milk products except (1) fluid milk products received from pool plants, (2) producer milk and milk received from a cooperative association in its capacity as a handler pursuant to § 1046.8(c), or (3) opening inventory; and

(b) Products other than fluid milk products from any source (including those produced at the plant) which are reprocessed or converted to another product in the plant during the month.

§ 1046.17 Route.

"Route" means delivery (including disposition from a plant store or from a distribution point and distribution by a vendor) of a fluid milk product(s) to a wholesale or retail outlet(s) other than to a:

- (a) Milk plant(s);
- (b) Distribution point(s); or
- (c) Food processing plant(s) for use other than for fluid consumption.

§ 1046.18 Chicago butter price.

"Chicago butter price" means the arithmetical average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any range as one price) per pound of Grade A (92-score) bulk creamery butter at Chicago as reported for the month by the Department.

§ 1046.19 Nonfat dry milk price.

"Nonfat dry milk price" means the arithmetical average of the weighted averages of the carlot prices per pounds of spray and roller process nonfat dry milk for human consumption, f.o.b. Chicago area manufacturing plants, as published for the month by the Department.

MARKET ADMINISTRATOR

§ 1046.20 Designation.

The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall

be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 1046.21 Powers.

The market administrator shall have the following powers with respect to this part:

- (a) To administer its terms and provisions;
- (b) To receive, investigate, and report to the Secretary complaints of violations;
- (c) To make rules and regulations to effectuate its terms and provisions; and
- (d) To recommend amendments to the Secretary.

§ 1046.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

(a) Within 45 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds provided by § 1046.88 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses (except those incurred under § 1046.87) necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part, and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Submit his books and records to examination and furnish such information and reports as may be requested by the Secretary;

(g) Verify all reports and payments of each handler by audit of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk or butterfat for such handler depends, or by such investigation as the market administrator deems necessary;

(h) Prepare and disseminate to the public such statistics and such information as he deems advisable and as do not reveal confidential information;

(i) Publicly announce, at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, within 5 days after the date upon which he is required to perform such acts, has not made re-

ports pursuant to §§ 1046.30 through 1046.32, or payments pursuant to §§ 1046.61, 1046.80, 1046.84, and 1046.86 through 1046.88;

(j) On or before the 15th day after the end of each month, report to each cooperative association, which so requests, with respect to milk delivered by such association or by its members to each handler during the month: (1) The percentage of such receipts classified in each class; and (2) the percentage relationship of such receipts to the total pounds of Class I milk available to assign to such receipts exclusive of the Class I milk disposed of by such handler to the pool plant(s) of other handlers and to nonpool plants. For the purpose of these reports, the milk received from such association shall be treated on a pro rata basis of the total producer milk received by such handler during the month;

(k) Publicly announce, by posting in a conspicuous place in his office and by such other means as he deems appropriate, and notify each handler in writing the prices and butterfat differentials determined for each month as follows:

(1) On or before the 8th day of each month, the Class I price and butterfat differential for the month and the Class II price and butterfat differential for the preceding month computed pursuant to §§ 1046.51 and 1046.52; and

(2) On or before the 12th day after the end of each month, the uniform price computed pursuant to § 1046.71, and the butterfat differential computed pursuant to § 1046.81;

(l) On or before the 13th day after the end of each month, the market administrator shall mail to each handler, at his last known address, a statement showing:

(1) The net obligation computed for such handler pursuant to § 1046.70; and

(2) The amounts to be paid by such handler pursuant to §§ 1046.61, 1046.84, 1046.87, and 1046.88.

REPORTS, RECORDS AND FACILITIES

§ 1046.30 Reports of receipts and utilization.

(a) Each cooperative association in its capacity as a handler and each handler with respect to each of his pool plants shall report for the month to the market administrator in the detail and on forms prescribed by the market administrator, such reports to be due at the office of the market administrator not later than the 8th day after the end of such month:

(1) The quantities of skim milk and butterfat contained in receipts of producer milk (including such handler's own farm production);

(2) The quantities of skim milk and butterfat contained in fluid milk products received from other pool plants and in milk received from a cooperative association in its capacity as a handler pursuant to § 1046.8(c);

(3) The quantities of skim milk and butterfat contained in other source milk;

(4) Inventories of fluid milk products on hand at the beginning and end of the month;

(5) The utilization of all skim milk and butterfat required to be reported

pursuant to this section, including a separate statement, if required by the market administrator, of the disposition of Class I milk other than on routes operated wholly or partially within the marketing area; and

(6) Such other information with respect to his receipts and utilization of butterfat and skim milk as the market administrator may prescribe;

(b) Each handler operating a city plant which is a nonpool plant shall report on or before the applicable date specified in paragraph (a) of this section his receipts of milk from dairy farmers and all other sources and the utilization of such receipts in accordance with § 1046.40 as prescribed by the market administrator.

§ 1046.31 Payroll reports.

On or before the 20th day after the end of each month, each handler who received milk from producers or from a cooperative association of producers, and each handler operating a nonpool plant subject to § 1046.61(c) shall submit to the market administrator for each of his pool plants, or nonpool plants subject to § 1046.61(c), his producer or dairy farmer payroll for deliveries during the month which shall show (a) the total pounds of milk received from each producer, producer cooperative association or dairy farmer, and the average butterfat content of such milk, (b) the prices paid and the amount of payment to each producer, producer cooperative association, or dairy farmer, and (c) the nature and amount of any credits, deductions, or charges involved in such payments.

§ 1046.32 Other reports.

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler shall report to the market administrator, as soon as possible after first receiving milk from any producer, the name and address of such producer, the date upon which such milk was first received, and the plant at which such milk was received.

(c) On or before the 10th day after the request of the market administrator, each handler shall submit a schedule of rates which are charged and paid for the transportation of milk from the farm of each producer to such handler's plant. Changes in such schedule of rates and the effective dates thereof shall be reported to the market administrator within 10 days.

§ 1046.33 Records and facilities.

Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts, records, and reports of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipts and utilization of producer milk and other source milk;

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream, and milk products handled;

(c) Payments to producers, including supporting records of all deductions and

written authorization from each producer of the rate per hundredweight or other method for computing hauling charges on such producer milk; and

(d) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream, and other milk products on hand at the beginning and end of each month.

§ 1046.34 Retention of records.

All books and records required under this part to be available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the calendar month to which such books and records pertain: *Provided*, That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified records and books until further written notification from the market administrator. In either case the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 1046.40 Skim milk and butterfat to be classified.

All skim milk and butterfat which is required to be reported pursuant to §§ 1046.30 and 1046.61 shall be classified by the market administrator pursuant to the provisions of §§ 1046.41 through 1046.46.

§ 1046.41 Classes of utilization.

Subject to the conditions set forth in §§ 1046.42 through 1046.44, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except skim milk and butterfat disposed of in fluid form pursuant to paragraph (b) (4) and (5) of this section: *Provided*, That fluid milk products which have been fortified with nonfat milk solids shall be Class I in an amount equal only to the weight of an equal volume of unfortified milk, skim milk, and cream of the same butterfat content; and

(2) Not accounted for as Class II milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Used to produce any product other than a fluid milk product;

(2) Used to produce frozen cream;

(3) In fluid milk products which have been fortified with nonfat milk solids which is not accounted for as Class I milk pursuant to the proviso in paragraph (a) (1) of this section;

(4) Disposed of for livestock feed or, in the case of skim milk only, dumped, upon prior notice as prescribed by the market administrator;

(5) Disposed of in bulk to bakeries, candy or soup manufacturers and other commercial food manufacturing estab-

lishments which do not dispose of any such receipts in the form of fluid milk products;

(6) In inventories of fluid milk products;

(7) In shrinkage, excluding shrinkage of other source milk, not to exceed the following:

(i) Two percent of skim milk and butterfat, respectively, in producer milk physically received at a pool plant; plus

(ii) One and one-half percent of skim milk and butterfat, respectively, in milk received at a pool plant from a cooperative association in its capacity as a handler pursuant to § 1046.8(c), except that if the handler operating such pool plant files notice with the market administrator on or before the date he submits his monthly report applicable to such milk pursuant to § 1046.30 that he is purchasing such milk on the basis of weights determined at the farm from farm bulk tank measurements the applicable percentage shall be two percent; plus

(iii) One and one-half percent of skim milk and butterfat, respectively, in fluid milk products received at a pool plant in bulk as a transfer from other pool plants; less

(iv) One and one-half percent of skim milk and butterfat, respectively, in fluid milk products transferred in bulk from a pool plant to other plants; and plus

(v) One-half of one percent of skim milk and butterfat, respectively, in producer milk received by a cooperative association in its capacity as a handler pursuant to § 1046.8(c), unless the exception provided in subdivision (ii) of this subparagraph applies; and

(8) In shrinkage of other source milk.

§ 1046.42 Shrinkage.

In computing shrinkage for the purposes of § 1046.41(b) (7) and (8) the market administrator shall determine the shrinkage of skim milk and butterfat, respectively, in the following manner:

(a) Compute the total shrinkage for each handler, or for each pool plant in the case of those handlers operating pool plants, by subtracting the skim milk and butterfat, respectively, classified as Class I milk pursuant to § 1046.41(a) (1) and as Class II milk pursuant to § 1046.41(b) (1) through (6) (subject to the provisions of §§ 1046.43 through 1046.45) from the receipts of the skim milk and butterfat, respectively, required to be reported pursuant to § 1046.03; and

(b) Prorate the total shrinkage of skim milk and butterfat, respectively, computed pursuant to paragraph (a) of this section between:

(1) The maximum pounds of skim milk and butterfat shrinkage allowable pursuant to § 1046.41(b) (7) divided by 0.02, and

(2) The total pounds of other source milk received in bulk in the form of fluid milk products.

§ 1046.43 Responsibility for classification of milk.

(a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat can prove to the market administra-

tor that such skim milk or butterfat should be classified otherwise.

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

§ 1046.44 Transfers.

Skim milk or butterfat disposed of by a handler from a pool plant or by a cooperative association in its capacity as a handler pursuant to § 1046.8 (b) or (c) shall be classified as follows:

(a) As Class I milk if transferred in the form of a fluid milk product to a pool plant of the same handler or of another handler unless utilization in Class II is claimed by the handler (or handlers) in their reports submitted pursuant to § 1046.30 or such milk is classified pursuant to paragraph (b) of this section: *Provided*, That the skim milk or butterfat so classified as Class II milk shall be limited to the amount of skim milk or butterfat, respectively, remaining in Class II milk in the transferee plant after making the assignments pursuant to § 1046.46(a) (1) through (8) and the corresponding steps of § 1046.46 (b), and any additional amount of skim milk or butterfat so transferred shall be classified as Class I milk: *And provided further*, That if the transferor plant has other source milk during the month, the skim milk or butterfat so transferred shall be classified at both plants so as to allocate the highest priced available class utilization to the producer milk at both plants: *And provided also*, That in no case shall the assignment of transferred skim milk or butterfat to Class I in the transferee plant exceed the difference between the transferee plant's total receipts of milk and milk products and utilization by the transferee plant in Class II;

(b) If a specified utilization of skim milk and butterfat transferred to a pool plant of another handler by a cooperative association in its capacity as a handler pursuant to § 1046.8(c) is not claimed by both handlers pursuant to paragraph (a) of this section, such skim milk and butterfat shall be classified pro rata to the respective amounts remaining in each class at the pool plant of the receiving handler after making the assignments pursuant to § 1046.46(a) (8) and the corresponding step of § 1046.46 (b) and after assignment of milk for which specified classification has been claimed by handlers pursuant to paragraph (a) of this section;

(c) As Class I milk if transferred to a producer-handler in the form of a fluid milk product;

(d) As Class I milk if transferred or diverted in the form of milk, skim milk or cream in bulk to a nonpool plant located less than 250 airline miles from the City Hall in either Louisville, Kentucky, or Evansville, Indiana, unless:

(1) The handler claims classification in Class II in his report submitted to the market administrator pursuant to § 1046.30;

(2) The operator of the nonpool plant maintains books and records showing the receipts and utilization of all skim milk and butterfat at such plant which are

made available if requested by the market administrator for verification;

(3) An amount of skim milk and butterfat, respectively, of not less than that so claimed by the handler was used in the nonpool plant in products included in Class II milk or was disposed of by the nonpool plant in the form of cream in bulk if the handler meets the requirements specified in subdivisions (i), (ii), and (iii) of this subparagraph:

(i) Claims classification of such cream as Class II;

(ii) Establishes that such cream was transferred without Grade A certification, each shipping container was tagged or labeled to show that the contents were for manufacturing use only, and the shipment of such cream was invoiced accordingly; and

(iii) Affords the market administrator at least 24 hours notice prior to shipment of such cream so that he may verify such shipment;

(4) The classification reported by the handler results in an amount of skim milk and butterfat in Class I milk claimed by all handlers transferring or diverting milk to such nonpool plant of not less than the amount of assignable Class I milk remaining after the following computation:

(i) From the total skim milk and butterfat, respectively, in fluid milk products disposed of from such nonpool plant and classified as Class I milk pursuant to the classification provisions of this order applied to such nonpool plant, subtract the skim milk and butterfat, respectively, received at such plant directly from dairy farmers who hold permits to supply "Grade A" milk and who the market administrator determines constitute the regular source of supply for such nonpool plant; and

(ii) From the remaining amount of Class I milk, subtract the skim milk and butterfat, respectively, in fluid milk products received from another market and which is classified and priced as Class I milk pursuant to another order issued pursuant to the Act: *Provided*, That the amount subtracted pursuant to this subdivision shall be limited to such markets' pro rata share of such remainder based on the total receipts of skim milk and butterfat, respectively, at such nonpool plant which are subject to the pricing provisions of an order issued pursuant to the Act; and

(5) If the skim milk and butterfat, respectively, transferred, or diverted by all handlers to such a nonpool plant and reported as Class I milk pursuant to this paragraph is less than the skim milk and butterfat assignable to Class I milk pursuant to subparagraph (4) of this paragraph, an equivalent amount of skim milk and butterfat shall be reclassified as Class I milk pro rata in accordance with the claimed Class II classification reported by each of such handlers; and

(e) As Class I milk if transferred or diverted in the form of milk, skim milk or cream in bulk to a nonpool plant located 250 airline miles or more from the City Hall in either Louisville, Kentucky, or Evansville, Indiana.

§ 1046.45 Computation of the skim milk and butterfat in each class.

For each month the market administrator shall correct for mathematical and other obvious errors the reports of receipts and utilization submitted pursuant to § 1046.30 by each handler and shall compute the total pounds of skim milk and butterfat, respectively, in Class I milk and Class II milk for such handler: *Provided*, That if any of the water contained in the milk from which a product is made is removed before such product is disposed of by a handler, the hundredweight of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

§ 1046.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1046.45 the market administrator shall determine for each pool plant the classification of producer milk received at the pool plant(s) of each handler each month as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk classified pursuant to § 1046.41(b)(7) (i) through (iv);

(2) Subtract from the total pounds of skim milk in Class I milk (i) the pounds of skim milk received in the form of sour cream in consumer packages and disposed of in the same packages as Class I milk if such sour cream is classified and priced as Class II milk under the Chicago Federal milk order (Order No. 30) and (ii) the pounds of skim milk received in the form of liquid dietary products in consumer packages and disposed of in the same packages as Class I milk to the extent of the amount allowable pursuant to § 1046.41(a)(1) if such products are classified and priced as Class I milk under the Cincinnati Federal milk order (Order No. 33);

(3) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk which are not subject to the Class I pricing provisions of an order issued pursuant to the Act and which have not been subtracted pursuant to subparagraph (2) (i) of this paragraph;

(4) Subtract from the remaining pounds of skim milk in Class II milk an amount equal to such remainder, or the product obtained by multiplying the pounds of skim milk in producer milk by 0.05, whichever is less;

(5) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk which are subject to the Class I pricing provisions of another order issued pursuant to the Act and which have not been subtracted pursuant to subparagraph (2) (ii) of this paragraph;

(6) Add to the pounds of skim milk remaining in Class II milk the pounds

of skim milk subtracted pursuant to subparagraph (4) of this paragraph;

(7) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk contained in inventory of fluid milk products on hand at the beginning of the month;

(8) Add to the remaining pounds of skim milk in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph;

(9) Subtract from the remaining pounds of skim milk in each class the skim milk in fluid milk products received from the pool plants of other handlers and from a cooperative association in its capacity as a handler pursuant to § 1046.8(c) according to its classification determined pursuant to § 1046.44 (a) or (b); and

(10) If the remaining pounds of skim milk in both classes exceed the pounds of skim milk received in producer milk, subtract such excess from the remaining pounds of skim milk in series beginning with Class II. Any amount of excess so subtracted shall be called "overage."

(b) Butterfat shall be allocated in accordance with the same procedure prescribed for skim milk in paragraph (a) of this section.

MINIMUM PRICES

§ 1046.50 Basic formula price.

The basic formula price shall be the higher of the prices as computed to the nearest one-tenth of a cent by the market administrator pursuant to paragraphs (a) and (b) of this section:

(a) The average of the basic or field prices per hundredweight reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department:

Company and Location

Borden Co., New London, Wis.
Carnation Co., Richland Center, Wis.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price per hundredweight computed by adding together the plus amounts calculated pursuant to subparagraphs (1) and (2) of this paragraph:

(1) Multiply the Chicago butter price by 4.2, and

(2) From the nonfat dry milk price, subtract 5.5 cents and multiply the difference by 8.2.

§ 1046.51 Class prices.

Subject to the provisions of §§ 1046.52 and 1046.53 the minimum class prices for milk per hundredweight for the month shall be determined by the market administrator as follows:

(a) *Class I milk.* The price for Class I milk shall be the basic formula price for the preceding month plus \$1.25, plus or minus a supply-demand adjustment of

not more than 50 cents computed pursuant to subparagraphs (1) through (6) of this paragraph: *Provided*, That the Class I price during the period beginning with the effective date of this amendment through May 1962 shall not be less than \$4.43:

(1) Calculate the percentage that total receipts of producer milk were of the total Class I milk at all pool plants for each of the following periods (using for those months included in this computation which are prior to the effective date of this order the quantities of receipts and utilization which have been established for such months under the Louisville-Lexington order and the Ohio Valley order):

(i) The 24-month period ending with the third preceding month, and

(ii) The two-month period ending with the second preceding month and the corresponding two-month period of each of the two preceding years:

(2) Determine the simple average of the percentages for the three two-month periods computed pursuant to subparagraph (1) (ii) of this paragraph and divide by the percentage for the 24-month period determined pursuant to subparagraph (1) (i) of this paragraph;

(3) Add to the quotient obtained pursuant to subparagraph (2) of this paragraph the corresponding ratios for each of the 11 months immediately preceding and divide by 12;

(4) Multiply 144 percent by the result obtained by dividing the ratio computed pursuant to subparagraph (2) of this paragraph by the ratio computed pursuant to subparagraph (3) of this paragraph;

(5) Determine the net deviation percentage by subtracting the percentage determined pursuant to subparagraph (4) of this paragraph from the percentage determined pursuant to subparagraph (1) (ii) of this paragraph for the second and third preceding months; and

(6) If the net deviation percentage computed pursuant to subparagraph (5) of this paragraph is a minus value, add to the Class I price, or if such net deviation percentage is a plus value, subtract from the Class I price an amount which is two-thirds of the total number of cents (rounding any fraction to the nearest tenth of a cent) computed pursuant to subdivisions (i), (ii), and (iii) of this subparagraph: *Provided*, That any such supply-demand adjustment shall not result in a change from the adjustment effective for the preceding month of more than 4 cents:

(i) One cent times each such percentage point of net deviation; plus

(ii) One cent times the lesser of:

(a) Each such percentage point of net deviation, or

(b) Each percentage point of net deviation of like direction (plus or minus, with any net deviation percentage of opposite direction considered to be zero for purposes of computations of this subparagraph) computed pursuant to subparagraph (5) of this paragraph for the month immediately preceding; plus

(iii) One cent times the least of:

(a) Each such percentage point of net deviation,

(b) Each percentage point of net deviation of like direction computed pursuant to subparagraph (5) of this paragraph for the month immediately preceding, or

(c) Each percentage point of net deviation of like direction computed pursuant to subparagraph (5) of this paragraph for the second preceding month.

(b) *Class II milk*. The price for Class II milk for the months of September through March shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the delivery period, and for the months of April through August such price less 10 cents: *Provided*, That such reported price shall be adjusted to a 3.5 percent butterfat basis by the butterfat differential computed pursuant to § 1046.52(b) and rounded to the nearest one-tenth of a cent.

§ 1046.52 Butterfat differentials to handlers.

For each one-tenth of one percent that the weighted average butterfat test of milk which is classified as Class I or Class II is more or less than 3.5 percent, there shall be added to or subtracted from, as the case may be, the price for such class a butterfat differential (computed to the nearest one-tenth of a cent) determined as follows:

(a) *Class I milk*. Multiply the Chicago butter price for the preceding month by 0.125.

(b) *Class II milk*. Multiply the Chicago butter price for the month by \$0.120.

§ 1046.53 Location differentials to handlers.

For that milk received from producers or from a cooperative association in its capacity as a handler pursuant to § 1046.8(c) at a pool plant located at any point which is 85 miles or more from the City Hall in Evansville, Indiana, or Louisville, Lexington, Danville, Elizabethtown, or Madisonville, Kentucky, whichever is nearer, by the shortest hard-surfaced highway distance as determined by the market administrator, and which is classified as Class I milk, the price specified in § 1046.51(a) shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received:

Distance from City Hall:	Rate per hundred-weight (cents)
85 miles but less than 95 miles.....	15.0
For each additional 10 miles or fraction thereof an additional.....	1.5

Provided, That for the purpose of calculating such location differential, fluid milk products which are transferred between pool plants shall be assigned to any remainder of Class II milk in the transferee plant after making the calculations prescribed in § 1046.46(a) (8) and the comparable steps in § 1046.46(b) for such plant, such assignment to transferor plants to be made in sequence according to the location differential applicable at each plant, beginning with the plant having the largest differential.

§ 1046.54 Use of equivalent prices.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATION OF PROVISIONS

§ 1046.60 Producer-handlers.

Sections 1046.50 through 1046.53, 1046.61, 1046.70, 1046.71, and 1046.80 through 1046.89 shall not apply to a producer-handler.

§ 1046.61 Obligation of handlers operating a nonpool plant which is a city plant.

Each handler, except a producer-handler, in his capacity as the operator of a nonpool plant which is a city plant shall:

(a) On or before the 8th day after the end of the month make reports to the market administrator with respect to the disposition of Class I milk in the marketing area and such other information on the total receipts and utilization of skim milk and butterfat at each of such plants as the market administrator may require, except that a handler selecting the option provided in paragraph (c) of this section at the time his report is filed shall report in accordance with §§ 1046.30 and 1046.31 as though such plant(s) were a pool plant; and

(b) On or before the 15th day after the end of the month pay to the market administrator, unless such handler elects at the time of reporting pursuant to paragraph (a) of this section the option provided pursuant to paragraph (c) of this section, the amounts specified in subparagraphs (1) and (2) of this paragraph:

(1) An amount for deposit in the producer-settlement fund equal to the rate of payment for unpriced milk pursuant to § 1046.70(c) multiplied by the hundredweight of skim milk and butterfat disposed of from such plant as Class I milk (computed in accordance with § 1046.45) on routes in the marketing area during such month less the skim milk and butterfat, respectively, received from a pool plant during the month and classified as Class I milk under this part; and

(2) An amount for administrative assessment equal to the rate specified in § 1046.88 with respect to skim milk and butterfat disposed of from such plant as Class I milk (computed in accordance with § 1046.45) on routes in the marketing area during such month less the skim milk and butterfat, respectively, received from a pool plant during the month and classified as Class I milk under this part; or

(c) On or before the 18th day after the end of the month pay to the market administrator the amounts specified in subparagraphs (1) and (2) of this paragraph:

(1) An amount for deposit in the producer-settlement fund equal to any plus amount remaining after deducting from the obligation that would have been computed pursuant to § 1046.70 for such non-

pool plant, and for any country plant (meeting the requirements equivalent to § 1046.12 (b) or (c)) which serves as a source of milk for such nonpool plant, if such plant(s) were a pool plant(s), the amounts specified in subdivisions (i) and (ii) of this subparagraph: *Provided*, That in the application of § 1046.44 for the purpose of this subparagraph, milk transferred or diverted from such nonpool plant(s) to a pool plant shall be classified as Class I and Class II milk in the same ratio as other source milk is allocated to each class in such pool plant pursuant to § 1046.46(a) (3) and the corresponding step of § 1046.46(b): *And provided further*, That in the application of § 1046.46(a) (9) and the corresponding step of § 1046.46(b), receipts of fluid milk products at such nonpool plant from a pool plant(s) shall be allocated to the class in which such products are classified at the pool plant(s) pursuant to § 1046.44 (d) or (e):

(i) The gross payments made on or before the 17th day after the end of the month for milk received at such plant(s) during the month from dairy farmers meeting the conditions in § 1046.7(a); and

(ii) Any payments to the producer-settlement funds under other orders issued pursuant to the Act applicable to milk handled at such plant during the month as a partially regulated plant under such other orders; and

(2) An amount for administrative assessment equal to the amount which would have been computed pursuant to § 1046.88 if such nonpool plant had been a pool plant during the month: *Provided*, That such amount shall be reduced by any amounts paid for the month as an administrative expense assessment determined on the basis of Class I milk disposed of on routes in other marketing areas pursuant to the terms under such other orders issued pursuant to the Act: *And provided further*, That if less Class I milk is disposed of from such plant on routes in the Louisville-Lexington-Evansville marketing area than is disposed of during the month on routes in another marketing area(s) as defined in an order(s) issued pursuant to the Act, and if an administrative expense assessment is applied at such plant as if a fully regulated (pool) plant under such order pursuant to the order for the marketing area where the volume of Class I milk disposed of from such plant is greatest, no administrative expense assessment shall be applied under this order.

§ 1046.62 Plants subject to other Federal orders.

Unless determined otherwise by the Secretary, the provisions of this part shall not apply to a milk plant during any month in which the milk at such plant would be subject to the pricing and pooling provisions of another order issued pursuant to the Act unless such plant meets the requirements for a pool plant pursuant to § 1046.12 and a greater volume of fluid milk products is disposed of from such plant to pool plants and to retail or wholesale outlets located in the Louisville-Lexington-Evansville mar-

keting area than in the marketing area regulated pursuant to such other order during the current month and each of the three months immediately preceding: *Provided*, That the operator of a plant which is exempted from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

DETERMINATION OF UNIFORM PRICE

§ 1046.70 Net obligation of each handler.

The net obligation of each handler for milk received during each month from producers shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class computed pursuant to §§ 1046.40 through 1046.46 by the applicable class prices and add together the resulting amounts;

(b) Add the amounts computed by multiplying the pounds of overage deducted from each class pursuant to § 1046.46 by the applicable class prices;

(c) Add the amount computed by multiplying the pounds of skim milk and butterfat subtracted from Class I milk pursuant to § 1046.46(a) (3) and the corresponding step of § 1046.46(b) by the price resulting from the following computations:

(1) For the months of January through September, subtract from the Class I price adjusted by the Class I butterfat and location differentials at the nearest plant(s) from which an equivalent amount of other source milk was received and the Class II price adjusted by the Class II butterfat differential; and

(2) For the months of October through December, subtract from the Class I price adjusted by the Class I butterfat differential the uniform price computed pursuant to § 1046.71 adjusted by the producer butterfat differential;

(d) Add the amount computed by multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of producer milk classified as Class II milk during the preceding month or the hundredweight of milk subtracted from Class I milk pursuant to § 1046.46(a) (7) and the corresponding step of § 1046.46(b), whichever is less; and

(e) Add the amount computed by multiplying the pounds of skim milk and butterfat subtracted from Class I milk pursuant to § 1046.46(a) (7) and the corresponding step of § 1046.46(b) which is in excess of the skim milk and butterfat applied pursuant to paragraph (d) of this section and the skim milk and butterfat subtracted from Class II milk pursuant to § 1046.46(a) (5) and the corresponding step of § 1046.46(b) in the preceding month by the applicable rate determined pursuant to paragraph (c) (1) or (2) of this section for the month.

§ 1046.71 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the net obligations computed pursuant to § 1046.70 for all handlers who made the reports prescribed in § 1046.30 for the month and who are not in default of payments pursuant to § 1046.84 for the preceding month;

(b) Subtract, if the average butterfat content of the producer milk included in these computations is greater than 3.5 percent, or add, if such average butterfat content is less than 3.5 percent an amount computed by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential computed pursuant to § 1046.81 and multiplying the resulting figure by the total hundredweight of such milk;

(c) Add an amount equal to the sum of the deductions to be made from producer payments for location differentials pursuant to § 1046.82;

(d) Subtract for each of the months of April, May, June and July an amount computed by multiplying the total hundredweight of producer milk included in these computations by 12 percent of the simple average of the basic formula prices, computed to the nearest cent, for the 12 months of the preceding calendar year (using prices computed according to the basic formula provisions of this order for any periods prior to the effective date of this order);

(e) Add an amount representing one-half of the cash balance on hand in the producer-settlement fund after deducting the total amount of contingent obligations to handlers pursuant to § 1046.85(a) and the balance held pursuant to paragraph (d) of this section for payment pursuant to § 1046.85(b);

(f) Divide the resulting total by the total hundredweight of producer milk included in these computations; and

(g) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (f) of this section. The resulting figure shall be the uniform price.

PAYMENTS

§ 1046.80 Time and method of payment for producer milk.

Except as provided in paragraph (c) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the last day of each month for milk received during the first 15 days of the month from such producer who has not discontinued delivery of milk to such handler, an amount computed at not less than the Class II price for 3.5 percent milk for the preceding month without deduction for hauling;

(b) On or before the 17th day after the end of each month for milk received from such producer during such month, an amount computed at not less than the uniform price per hundredweight plus the per hundredweight payment pro-

vided by § 1046.85(b) for the month, subtracted pursuant to § 1046.81, and plus or minus adjustments for errors made in previous payments to such producer and less (1) the payment made pursuant to paragraph (a) of this section, (2) the location differential pursuant to § 1046.82, (3) marketing service deductions pursuant to § 1046.87 and (4) proper deductions authorized by such producer which, in the case of a deduction for hauling, shall be in writing and signed by such producer or, in the case of members of a cooperative association which is marketing the producer's milk, by such association;

(c) (1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association in lieu of payments pursuant to paragraphs (a) and (b) of this section, each handler shall pay to the cooperative association on or before the second day prior to the dates specified in paragraphs (a) and (b), respectively, of this section, an amount equal to the sum of the individual payments otherwise payable to such producers without the deductions provided by paragraphs (b) (3) and (4) of this section: *Provided*, That deductions for supplies authorized by such producer may be made. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(d) In making the payments to producers pursuant to paragraph (b) of this section, each handler shall furnish each producer a supporting statement which shall show for each month the following:

(1) The identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer.

(e) In making payments to a cooperative association pursuant to paragraph (c) of this section, each handler shall report to such cooperative association for each such producer on forms approved by the market administrator as follows:

(1) On or before the 20th day of the month, the total pounds of milk received during the first 15 days of such month, and

(2) On or before the 7th day of the following month, the total pounds of milk received each month, together with the butterfat content of such milk and the amount of deductions claimed by such handler.

(f) Each handler shall pay to the cooperative association on or before the 10th day of the following month for milk received from a cooperative association for which it is a handler pursuant to § 1046.8(c) an amount computed at not less than the value of such milk at the minimum prices for milk in each class subject to the applicable location and butterfat differentials.

§ 1046.81 Butterfat differentials to producers.

In making payment to producers pursuant to § 1046.80(b) each handler shall add to the uniform price not less than, or subtract from the uniform price not more than, as the case may be, for each one-tenth of one percent that the butterfat content of the milk received from the producer is above or below 3.5 percent, a butterfat differential computed by the market administrator by multiplying the total pounds of butterfat in producer milk classified in Class I and Class II milk during the month pursuant to §§ 1046.40 through 1046.46 by the respective butterfat differential for each class, dividing the sum of such values by the total pounds of such butterfat, and rounding the resulting figure to the nearest one-tenth of a cent.

§ 1046.82 Location differentials to producers.

In making payments to producers pursuant to § 1046.80(b) a handler shall deduct from the uniform price, with respect to all milk received from producers, not more than the appropriate zone differential provided in § 1046.53.

§ 1046.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1046.61, 1046.84 and 1046.86 and out of which he shall make all payments pursuant to §§ 1046.85 and 1046.86: *Provided*, That payments due any handler shall be offset by payments due from such handler.

§ 1046.84 Payments to the producer-settlement fund.

On or before the 15th day after the end of each month, each handler shall pay to the market administrator any

amount by which the net obligation of such handler for the month is greater than an amount computed by multiplying the hundredweight of milk received by him from producers during the month by the uniform price adjusted by the producer butterfat and location differentials.

§ 1046.85 Payments out of the producer-settlement fund.

(a) On or before the 16th day after the end of each month, the market administrator shall pay to each handler for payment to producers any amount by which the net obligation of such handler for the month is less than an amount computed by multiplying the hundredweight of milk received by him from producers during the month by the uniform price adjusted by the producer butterfat and location differentials: *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

(b) On or before the 16th day after the end of each of the months of September, October, November, and December, the market administrator shall pay out of the producer-settlement fund to each handler for all milk for which payment is to be made to producers pursuant to § 1046.80(b) for such month and to each cooperative association for all producer milk for which such association is receiving payments pursuant to § 1046.80(c) for such month at the following rate per hundredweight: For the months of September through November, divide one-fourth of the aggregate amount set aside in the producer-settlement fund pursuant to § 1046.71(d) during the immediately preceding period of April through July, and for the month of December, divide the balance remaining in such fund by the hundredweight of producer milk received by all handlers during the month (computed to the nearest cent per hundredweight).

§ 1046.86 Adjustment of accounts.

(a) Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever such verification discloses that payment is due from the market administrator to any handler, pursuant to § 1046.85, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer for milk received by such handler discloses payment of less than is required by § 1046.80, the handler shall pay any amount so due not later than the time of making payment to producers next following such disclosure.

(b) Overdue accounts: Any unpaid obligation of a handler or of the market administrator pursuant to §§ 1046.80,

1046.84, 1046.85, 1046.86(a), 1046.87, or 1046.88 shall be increased one-half of one percent each month or fraction thereof, compounded monthly, until such obligation is paid.

§ 1046.87 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to § 1046.80(b), shall deduct 5 cents per hundredweight, or such amount not in excess thereof as the Secretary may prescribe, with respect to all milk received by such handler from producers (other than such handler's own farm production) during the month and shall pay such deductions to the market administrator on or before the 15th day after the end of such month. Such moneys shall be used by the market administrator to verify weights, samples, and tests of milk received from such producers and to provide such producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) Each cooperative association which is actually performing the services described in paragraph (a) of this section, as determined by the market administrator, may file with a handler a claim for authorized deductions from the payments otherwise due to its producer members for milk delivered to such handler. Such claim shall contain a list of the producers for whom such deductions apply, an agreement to indemnify the handler in the making of the deductions, and a certification that the association has an unexpired membership contract with each producer. In making payments to producers for milk received during the month, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, deductions in accordance with the association's claim and shall pay the amount deducted to the association within 15 days after the end of the month.

§ 1046.88 Expense of administration.

As his pro rata share of the expense of the administration of this part, each handler, excluding a cooperative association in its capacity as a handler pursuant to § 1046.8(c), shall pay to the market administrator on or before the 15th day after the end of each month 3 cents per hundredweight, or such lesser amount as the Secretary may prescribe, for each hundredweight of skim milk and butterfat contained in his receipts during the month of (a) producer milk (including such handler's own farm production), (b) milk received from a cooperative association in its capacity as a handler pursuant to § 1046.8(c), and (c) other source milk allocated to Class I milk pursuant to § 1046.46(a)(3) and the corresponding step of § 1046.46(b). A handler operating a city plant which is a nonpool plant shall pay administrative assessments in accordance with § 1046.61.

§ 1046.89 Termination of obligations.

The provisions of this section shall apply to any obligation under this part

for the payment of money irrespective of when such obligation arose.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report of the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled, and
- (3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producer(s) or cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deductions of set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION, OR TERMINATION

§ 1046.90 Effective time.

The provisions of this part, or any amendment to this part, shall become

effective at such time as the Secretary may declare and shall continue in force until suspended or terminated, pursuant to § 1046.91.

§ 1046.91 Suspension or termination.

Any or all provisions of this part, or any amendment to this part, shall be suspended or terminated as to any or all handlers after such reasonable notice as the Secretary may give and shall, in any event, terminate whenever the provisions of the Act authorizing it cease to be in effect.

§ 1046.92 Continuing power and duty.

(a) If upon the suspension or termination of any or all provisions of this part there are any obligations arising under this part, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided*, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

(b) The market administrator, or such other person as the Secretary may designate, shall (1) continue in such capacity until discharged, (2) from time to time account for all receipts and disbursements and, if so directed by the Secretary, deliver all funds or property on hand, together with the books and records of the market administrator, or such person, to such person as the Secretary shall direct, and (3) if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant to this part.

§ 1046.93 Liquidation after suspension or termination.

Upon the suspension or termination of any or all provisions of this part, except §§ 1046.34, 1046.89, and 1046.91 through 1046.93, the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid and owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1046.100 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent

or representative in connection with any of the provisions of this part.

§ 1046.101 Separability of provisions.

If any provision of this part, or its application to any person, or circumstances, is held invalid, the application of such provision and of the remaining provisions of this part to other persons or circumstances shall not be affected thereby.

Signed at Washington, D.C., on January 31, 1962.

FRANK J. WELCH,
Assistant Secretary.

[F.R. Doc. 62-1170; Filed, Feb. 2, 1962;
8:49 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Parts 600, 601]

[Airspace Docket No. 61-NY-88]

FEDERAL AIRWAY, ASSOCIATED CONTROL AREAS, AND REPORTING POINTS

Proposed Revocation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering amendments to Parts 600 and 601 of the regulations of the Administrator, the substance of which is stated below.

Red Federal airway No. 8 presently extends from Lock Haven, Pa., to Crystal Lake, Pa. The Federal Aviation Agency is considering revoking Red 8. It is the policy of this Agency to revoke L/MF airways wherever adequate VOR airways are available, and it appears that the route from Lock Haven to Crystal Lake, Pa., is adequately served by the numerous VOR Federal airways in this area. In addition, the Federal Aviation Agency IFR peak-day airway traffic survey for the period of July 1, 1960, to June 30, 1961, shows a maximum of one aircraft movement on Red 8. Therefore, it appears that the retention of this airway is unjustified as an assignment of airspace. Accordingly, the Federal Aviation Agency proposes to revoke Red 8 and its associated control areas. Adoption of this proposal would not result in discontinuance of the low frequency navigational aids associated with Red 8.

Any proposal to discontinue one or more of these aids would be circularized separately and interested persons would be afforded an opportunity to comment. Concurrently with this action, § 601.4208, relating to reporting points associated with Red 8 would also be revoked.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Assistant Administrator, Eastern Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hear-

ing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room C-226, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on January 29, 1962.

CLIFFORD P. BURTON,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 62-1141; Filed, Feb. 2, 1962;
8:46 a.m.]

[14 CFR Parts 600, 608]

[Airspace Docket No. 61-KC-21]

RESTRICTED AREA AND FEDERAL AIRWAY

Proposed Designation and Alteration

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering amendments to §§ 600.6169 and 608.47 of the regulations of the Administrator, the substance of which is stated below.

The Federal Aviation Agency has under consideration a proposal by the Department of the Army for the designation of a restricted area at Sioux Ordnance Depot, Sidney, Nebr., as follows:

Boundaries. A circular area with a 2400-foot radius centered at latitude 41°15'13" N., longitude 103°04'50" W.

Designated altitudes. Surface to 7,400 feet MSL.

Time of designation. 0900 to 2100 MST, Monday through Friday.

Using agency. Commanding Officer, Sioux Ordnance Depot, Sidney, Nebr.

The proposed restricted area would provide special use airspace for the neutralization of ammunition by a process known as burning. The Department of the Army advises that this process is considered a hazard to aircraft since an uncontrolled explosion may occur at any time during the burning operation.

Low altitude VOR Federal airway No. 169 would overlap the proposed restricted area to a minor degree (approximately one-half mile). To preclude the necessity of prior coordination for the use of this segment of airway and to afford maximum flexibility of operations, the

description of Victor 169 would be altered to exclude the portion which would lie within the proposed restricted area. The exclusion of this portion of Victor 169 would provide adequate separation between enroute operations along the airway and operations within the proposed restricted area since the maximum allowable tolerance of the VOR navigation aid (Sidney, Nebr., VOR) at this distance from the facility would permit an even greater reduction in the airway width.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Assistant Administrator, Central Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, 4825 Troost Avenue, Kansas City 10, Mo. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room C-226, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on January 29, 1962.

CLIFFORD P. BURTON,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 62-1144; Filed, Feb. 2, 1962;
8:46 a.m.]

[14 CFR Part 601]

[Airspace Docket No. 61-FW-84]

CONTROL ZONE

Proposed Designation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Part 601 of the regulations of the Administrator, the substance of which is stated below.

The Federal Aviation Agency is considering the designation of a control zone within a 5-mile radius of Stallings Field, Kinston, N.C. (latitude 35°19'40" N., longitude 77°37'05" W.), and within 2 miles either side of the Kinston VOR 047° True radial extending from the

VOR to 8 miles northeast. The time of designation would coincide with the hours of operation of the aviation weather reporting service provided by Piedmont Airlines from 0700 to 2330 eastern standard time, daily. Variances in the time of weather reporting would alter the time of designation of the control zone and would be reported in advance of such changes by the issuance of a Notice to Airmen.

The proposed control zone would provide protection for aircraft executing prescribed instrument approach procedures at Stallings Field. Communications would be provided by the FAA's New Bern Flight Service Station.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Assistant Administrator, Southern Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, 52 Fairlie Street NW., Atlanta 3, Ga. All communications received within forty-five days after publication of this notice in the *FEDERAL REGISTER* will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room C-226, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on January 30, 1962.

CLIFFORD P. BURTON,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 62-1135; Filed, Feb. 2, 1962;
8:45 a.m.]

[14 CFR Part 601]

[Airspace Docket No. 61-KC-54]

CONTROL ZONE

Proposed Designation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Part 601 of the regulations of the Administrator, the substance of which is stated below.

The Federal Aviation Agency has under consideration the designation of a part-time control zone at Oshkosh, Wis.

The proposed control zone would be designated within a 7-mile radius of the Winnebago County Airport, Oshkosh, Wis. (latitude 43°59'20" N., longitude 88°33'15" W.) and within 2 miles either side of the Oshkosh VOR 176° True radial extending from the VOR to 8 miles south, from 0600 to 2200 hours local standard time daily. This control zone would provide protection for aircraft executing prescribed instrument approach procedures to the Winnebago County Airport. In addition, the 7-mile radius is required to contain the flight paths of aircraft executing standard instrument departures. Communications and weather service would be provided for aircraft operating within the proposed control zone by the Federal Aviation Agency control tower scheduled to be commissioned in May 1962. If this proposal is adopted, the control zone would not be made effective prior to the time communications and weather service are available.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Assistant Administrator, Central Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, 4825 Troost Avenue, Kansas City 10, Mo. All communications received within forty-five days after publication of this notice in the *FEDERAL REGISTER* will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room C-226, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on January 30, 1962.

CLIFFORD P. BURTON,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 62-1136; Filed, Feb. 2, 1962;
8:46 a.m.]

[14 CFR Part 602]

[Airspace Docket No. 61-WA-215]

JET ADVISORY AREA

Proposed Designation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the

Federal Aviation Agency is considering an amendment to § 602.300 of the regulations of the Administrator, the substance of which is stated below.

In accordance with Special Civil Air Regulation No. 444 (26 F.R. 292) the Federal Aviation Agency has under consideration the designation of a terminal radar jet advisory area within the continental control area from flight level 240 to flight level 390 inclusive and within 16 miles either side of the following instrument departure route from the San Francisco/Oakland, Calif., Metropolitan area.

From the San Francisco, Calif., VOR via the intersection of the San Francisco VOR 304° and the Sacramento, Calif., VORTAC 233° True radials; thence via the Sacramento VORTAC 233° True radial to the intersection of the Sacramento VORTAC 233° and the Linden, Calif., VORTAC 269° True radials; thence via the Linden VORTAC 269° True radial to the Linden VORTAC; thence via the Linden VORTAC 046° and the Reno, Nev., VOR 208° True radials to the Reno VOR.

The designation of this proposed terminal radar jet advisory area would provide a defined area wherein jet advisory service would be provided to civil turbojet aircraft departing the San Francisco/Oakland Metropolitan area.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. All communications received within forty-five days after publication of this notice in the *FEDERAL REGISTER* will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Chief, Airspace Utilization Division. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room C-226, 1711 New York Avenue NW., Washington 25, D.C.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on January 30, 1962.

CLIFFORD P. BURTON,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 62-1137; Filed, Feb. 2, 1962;
8:46 a.m.]

[14 CFR Part 602]

[Airspace Docket No. 61-WA-221]

JET ADVISORY AREAS

Proposed Designation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the

Federal Aviation Agency is considering an amendment to § 602.300 of the regulations of the Administrator, the substance of which is stated below.

The Federal Aviation Agency has under consideration the designation of additional terminal radar jet advisory areas at Tampa, Fla. It is proposed to designate terminal radar jet advisory areas within the continental control area from flight level 240 to flight level 390 inclusive within 16 miles either side of the following departure/arrival routes at Tampa:

1. St. Petersburg, Fla., VORTAC to the Ocala, Fla., VORTAC.

2. St. Petersburg VORTAC via the St. Petersburg VORTAC 320° True radial to the boundary of the continental control area.

3. Gainesville, Fla., VOR via the intersection of the Gainesville VOR 231° and the St. Petersburg VORTAC 350° True radials; thence south via the St. Petersburg VORTAC 350° True radial to the boundary of the continental control area.

The designation of these proposed terminal radar jet advisory areas would provide defined areas wherein jet advisory service would be provided to civil turbojet aircraft departing the Tampa/St. Petersburg Metropolitan area.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Chief, Airspace Utilization Division. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room C-226, 1711 New York Avenue NW., Washington 25, D.C.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on January 30, 1962.

CLIFFORD P. BURTON,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 62-1138; Filed, Feb. 2, 1962;
8:46 a.m.]

[14 CFR Part 602]

[Airspace Docket No. 61-LA-115]

JET ADVISORY AREA

Proposed Designation

Pursuant to the authority delegated to me by the Administrator (14 CFR

409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to § 602.300 of the regulations of the Administrator, the substance of which is stated below.

The Federal Aviation Agency has under consideration the designation of a terminal radar jet advisory area from flight level 240 to flight level 390 inclusive and within 16 miles either side of the following instrument departure route from the Denver, Colo., terminal area: From the Denver VORTAC via direct radials to the Scottsbluff, Nebr., VORTAC.

The designation of this proposed terminal jet advisory area would provide a defined area wherein jet advisory service would be provided to civil turbojet aircraft departing the Denver terminal area.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Regional Manager, Western Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, 5651 West Manchester Avenue, P.O. Box 90007, Airport Station, Los Angeles 45, Calif. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room C-226, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on January 29, 1962.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 62-1142; Filed, Feb. 2, 1962;
8:46 a.m.]

[14 CFR Part 608]

[Airspace Docket No. 61-LA-120]

RESTRICTED AREA

Proposed Alteration

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to § 608.25 of the regu-

lations of the Administrator, the substance of which is stated below.

The China Lake South, Calif., Restricted Area R-2506 is an area of approximately 89 square miles assigned to the Commander, Naval Ordnance Test Station, China Lake, Calif., and provides restricted airspace for the run-in portion of the loft bombing maneuvers conducted at a target located within the adjacent China Lake Restricted Area R-2505 at latitude 35°46'00" N., longitude 117°44'10" W. R-2506 is designated from the surface to 6,000 feet MSL, sunrise to sunset, Monday through Friday, and provides a 5 nautical mile wide run-in corridor approximately 22 nautical miles in length from the target site.

The Federal Aviation Agency has reviewed information submitted by the Department of the Navy concerning the utilization of this restricted area. This review indicates that the special use airspace assigned to the Naval Ordnance Test Station at China Lake is in excess of that necessary to contain the activities conducted therein. Accordingly, the Federal Aviation Agency is considering the alteration of the assigned special use airspace by reducing the lateral dimensions of R-2506 to the extent necessary to satisfy the minimum requirements for activities associated with the run-in portion of the loft bombing maneuver. This action would reduce the size of R-2506 to an area of approximately 8 square miles which would provide for a 10-nautical mile run-in to the target site.

If this action is taken, R-2506 would be designated as follows:

R-2506 China Lake South, Calif.:

Boundaries. Beginning at latitude 35°37'30" N., Longitude 117°41'40" W.; to latitude 35°35'50" N., longitude 117°41'35" W.; to latitude 35°35'45" N., longitude 117°45'25" W.; to latitude 35°37'30" N., longitude 117°45'30" W.; to the point of beginning.

Designated altitudes. Surface to 6,000 feet MSL.

Time of designation. Sunrise to sunset, Monday through Friday.

Controlling agency. Federal Aviation Agency, Los Angeles ARTC Center.

Using agency. Commander, Naval Ordnance Test Station, China Lake, Calif.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Assistant Administrator, Western Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, 5651 West Manchester Avenue, P.O. Box 90007, Airport Station, Los Angeles 45, Calif. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for

PROPOSED RULE MAKING

consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room C-226, 1711 New York

Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on January 29, 1962.

CLIFFORD P. BURTON,
Acting Chief,

Airspace Utilization Division.

[F.R. Doc. 62-1143; Filed, Feb. 2, 1962;
8:46 a.m.]

Notices

DEPARTMENT OF STATE

Agency for International Development

[Delegation of Authority 9]

CERTAIN OFFICERS

Designation To Act as Administrator

Pursuant to the authority vested in me by Delegation of Authority No. 104 from the Secretary of State, and in accordance with the provisions of section 624(b) of the Foreign Assistance Act of 1961, as amended, it is directed as follows:

In the event of the absence, death, resignation or disability of the Administrator, the following designated officers of the Agency for International Development shall, in the order of succession indicated, act as Administrator:

1. Deputy Administrator.
2. Deputy Administrator for Program.
3. Assistant Administrator, Bureau for Near East-South Asia.
4. Assistant Administrator, Bureau for Latin America.
5. Assistant Administrator, Bureau for Africa and Europe.
6. Assistant Administrator, Bureau for Far East.

This delegation of authority shall be effective immediately.

FOWLER HAMILTON,
Administrator.

JANUARY 26, 1962.

[F.R. Doc. 62-1168; Filed, Feb. 2, 1962;
8:49 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-3]

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Notice of Extension of Completion Date

Please take notice that the Atomic Energy Commission has issued an order extending to April 2, 1962, the latest completion date specified in Construction Permit No. CPPR-1 for the construction of the 163,000 kilowatt (electrical) pressurized water nuclear reactor to be located at Indian Point, New York.

Copies of the Commission's order and of the application by Consolidated Edison Company of New York, Inc., are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Germantown, Md., this 30th day of January 1962.

For the Atomic Energy Commission.

R. LOWENSTEIN,
*Director, Division of
Licensing and Regulation.*

[F.R. Doc. 62-1128; Filed, Feb. 2, 1962;
8:45 a.m.]

[Docket No. 50-101]

UNITED NUCLEAR CORP.

Notice of Issuance of Facility License Amendment

Please take notice that the Atomic Energy Commission has issued Amendment No. 3, set forth below, to Facility License No. R-49. The license, as amended, authorizes United Nuclear Corporation to possess and operate the nuclear reactor, designated as the "Pawling Research Reactor" and located at Pawling, New York. This amendment authorizes United Nuclear Corporation (1) to modify the upper end cap design of the outer buffer fuel elements and the means of attaching this fuel to the upper support structure; and (2) to omit a three inch Masonite reflector around the sides of the top of the reactor tank. These authorizations were among those requested by the licensee in an application for amendment dated May 23, 1961.

The Commission has found that operation of the facility in accordance with the license, as amended, will not present undue hazard to the health and safety of the public and will not be inimical to the common defense and security.

The Commission has further found that prior public notice of proposed issuance of this amendment is not necessary in the public interest since operation of the facility in accordance with the license as amended would not present any substantial change in the hazards to the health and safety of the public from those already considered acceptable in connection with the previously approved operation of this facility.

In accordance with the Commission's rules of practice (10 CFR Part 2) the Commission will direct the holding of a formal hearing on the matter of issuance of the license amendment upon receipt of a request therefor from the licensee or an intervenor within thirty (30) days after the issuance of the license amendment. Petitions for leave to intervene and requests for a formal hearing shall be filed by mailing a copy to the Office of the Secretary, Atomic Energy Commission, Washington 25, D.C., or by delivery of a copy in person to the Office of the Secretary, Germantown, Maryland or the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

For further details, see (1) the application for license amendment dated May 23, 1961, by United Nuclear Corporation, and (2) a hazards analysis of the proposed amendment prepared by the Division of Licensing and Regulation, both on file at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of item (2) above may be obtained at the Commission's Public Document Room, or upon request addressed to the Atomic Energy Commis-

sion, Washington 25, D.C., Attention: Director, Division of Licensing and Regulation.

Dated at Germantown, Md., this 29th day of January 1962.

For the Atomic Energy Commission.

ROBERT H. BRYAN,
*Chief, Research and Power Re-
actor Safety Branch, Division
of Licensing and Regulation.*

AMENDMENT TO FACILITY LICENSE

[License No. R-49; Amdt. 3]

License No. R-49, as previously amended, is further amended as follows:

1. The licensee is authorized to modify the upper end cap design of the outer buffer fuel elements as described in the application for amendment dated May 23, 1961.

2. The licensee is authorized to omit a three inch Masonite reflector around the sides of the top of the reactor tank as described in the application for amendment dated May 23, 1961.

This amendment is effective as of the date of issuance.

Date of issuance: January 29, 1962.

For the Atomic Energy Commission.

ROBERT H. BRYAN,
*Chief, Research and Power Reactor
Safety Branch, Division of Licen-
sing and Regulation.*

[F.R. Doc. 62-1129; Filed, Feb. 2, 1962;
8:45 a.m.]

GENERAL SERVICES ADMINIS- TRATION

[Delegation of Authority 155, Rev.;
Revocation]

SECRETARY OF COMMERCE

Delegation of Authority to Establish Special Police Force for Protection of Maritime Administration Instal- lations; Revocation

1. Pursuant to the authority vested in the Administrator of General Services by the provisions of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, Delegation of Authority No. 155, Revised (22 F.R. 7499), dated September 12, 1957, to the Secretary of Commerce to appoint uniformed guards as special policemen in connection with the protection of Maritime Administration installations is hereby revoked.

2. The revocation of this delegation of authority shall be effective as of the date hereof.

Dated: January 30, 1962.

BERNARD L. BOUTIN,
Administrator.

[F.R. Doc. 62-1160; Filed, Feb. 2, 1962;
8:48 a.m.]

**INTERSTATE COMMERCE
COMMISSION**

[Rev. S. O. 562, Taylor's I.C.C. Order 140]

MIDLAND VALLEY RAILROAD CO.

Rerouting and Diversion of Traffic

In the opinion of Charles W. Taylor, Agent, the Midland Valley Railroad Company, due to bridge damage near Arkansas City, Kansas, is unable to transport traffic routed over its lines.

It is ordered, That:

(a) Rerouting traffic: Midland Valley Railroad Company and its connections, being unable to transport traffic in accordance with shippers routing because of bridge damage are hereby authorized to divert or reroute traffic moving over its lines over any available route to expedite the movement.

(b) Concurrence of receiving roads to be obtained: The railroad desiring to divert or reroute traffic under this order shall confer with the proper transportation officer of the railroad or railroads

to which such traffic is to be diverted or rerouted, and shall receive the concurrence of such other railroads before the rerouting or diversion is ordered.

(c) Notification to shippers: The carrier rerouting cars in accordance with this order shall notify each shipper at the time each car is diverted or rerouted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic by said Agent is deemed to be due to carrier's disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to such traffic; divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or

upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) Effective date: This order shall become effective at 4:00 p.m., January 29, 1962.

(g) Expiration date: This order shall expire at 11:59 p.m., February 15, 1962, unless otherwise modified, changed, suspended or annulled.

It is further ordered. That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement and by filing it with the Director, Division of the Federal Register.

Issued at Washington, D.C., January
29, 1962.

INTERSTATE COMMERCE
COMMISSION,
CHARLES W. TAYLOR,
Agent

[F.R. Doc. 62-1159; Filed, Feb. 2, 1962;
8:48 a.m.]

CUMULATIVE CODIFICATION GUIDE—FEBRUARY

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during February.

3 CFR	Page
EXECUTIVE ORDERS:	
May 24, 1905	972
702	972
769	972
1438	972
4131	972
7127	972
5 CFR	
6	963, 1001
6 CFR	
421	963
472	933
7 CFR	
319	963
354	964
401	1001-1003
723	964, 965
725	966, 967
727	969
728	942
905	1004-1006
907	1006
910	1007
970	1007
990	969
1127	1040
1129	1047
1132	1054
PROPOSED RULES:	
815	984
959	1012
1046	1013
1095	1013
14 CFR	
3	1008
4b	1008

	Page
14 CFR—Continued	
6-----	1008
7-----	1008
40-----	1008
41-----	1008
42-----	1008
43-----	1008
288-----	972
302-----	973
507-----	1009
514-----	974
600-----	942, 943, 1009
601-----	943, 976
609-----	977
PROPOSED RULES:	
507-----	986
600-----	949, 1033
601-----	949, 1033, 1034
602-----	1034, 1035
608-----	1033, 1035
16 CFR	
13-----	946, 1009
18 CFR	
141-----	970
260-----	970
19 CFR	
16-----	971
31-----	971
PROPOSED RULES:	
2-----	984
21 CFR	
3-----	1009
46-----	943
120-----	1010
121-----	943
141a-----	944, 945
146-----	945
146a-----	944, 945

	Page
21 CFR—Continued	
147-----	945
191-----	945
PROPOSED RULES:	
120-----	948
121-----	948, 985
22 CFR	
11-----	1010
29 CFR	
604-----	945
606-----	945
677-----	945
690-----	945
39 CFR	
4-----	1010
168-----	1010
43 CFR	
161-----	947
PUBLIC LAND ORDERS:	
842-----	972
2594-----	947
2596-----	972
2597-----	972
2598-----	972
2599-----	972
2600-----	1011
47 CFR	
PROPOSED RULES:	
3-----	949, 985
49 CFR	
95-----	983
50 CFR	
33-----	983
PROPOSED RULES:	
33-----	949

THE NATIONAL ARCHIVES
LITTERA
SCRIPTA
MANET
1934
OF THE UNITED STATES

FEDERAL REGISTER

VOLUME 27 NUMBER 24

Washington, Saturday, February 3, 1962

Milk Marketing Orders for
San Antonio, Texas, Marketing Area,
Austin-Waco Marketing Area,
and
Texas Panhandle Marketing Area

Title 7—AGRICULTURE

Chapter X—Agricultural Stabilization and Conservation Service (Marketing Agreements and Orders), Department of Agriculture

[Milk Order 127]

PART 1127—MILK IN SAN ANTONIO, TEXAS, MARKETING AREA

Order Amending Order

Sec.	Findings and determinations.
1127.0	
1127.1	Act.
1127.2	Secretary.
1127.3	Person.
1127.4	Cooperative association.
1127.5	San Antonio, Texas, marketing area.
1127.6	Distributing plant.
1127.7	Supply plant.
1127.8	Pool plant.
1127.9	Nonpool plant.
1127.10	Handler.
1127.11	Producer.
1127.12	Producer milk.
1127.13	Other source milk.
1127.14	Fluid milk products.
1127.15	Route.

MARKET ADMINISTRATOR

1127.20	Designation.
1127.21	Powers.
1127.22	Duties.
	REPORTS, RECORDS, AND FACILITIES
1127.30	Reports of receipts and utilization.
1127.31	Reports of payments to producers.
1127.32	Records and facilities.
1127.33	Retention of records.

CLASSIFICATION

1127.40	Skim milk and butterfat to be classified.
1127.41	Classes of utilization.
1127.42	Shrinkage.
1127.43	Responsibility of handlers and reclassification of milk.
1127.44	Transfers.
1127.45	Computation of skim milk and butterfat in each class.
1127.46	Allocation of skim milk and butterfat classified.

MINIMUM PRICES

1127.50	Minimum prices.
1127.51	Class I milk.
1127.52	Class II and Class II-A milk.
1127.53	Butterfat differentials to handlers.
1127.54	Location adjustment credit to handlers.
1127.55	Use of equivalent prices.

APPLICATION OF PROVISIONS

Sec.	Handlers subject to other Federal orders.
1127.60	
1127.61	Handlers operating nonpool plants.
	UNPRICED MILK
1127.65	Rate of payment on unpriced milk.

DETERMINATION OF UNIFORM PRICES TO PRODUCERS

1127.70	Computation of value of milk for each handler.
1127.71	Computation of uniform price for pool milk.

PAYMENT FOR MILK

1127.80	Time and method of payment.
1127.81	Producer butterfat differential.
1127.82	Location adjustment to producers.
1127.83	Producer-settlement fund.
1127.84	Payments to the producer-settlement fund.
1127.85	Payments out of the producer-settlement fund.
1127.86	Adjustment of accounts.
1127.87	Marketing of service.
1127.88	Payment of administration expense.
1127.89	Termination of obligation.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

1127.90	Effective time.
1127.91	Suspension or termination.
1127.92	Continuing obligations.
1127.93	Liquidation.

MISCELLANEOUS PROVISIONS

1127.100	Agents.
1127.101	Separability of provisions.
	AUTHORITY: §§ 1127.0 to 1127.101 issued under secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 1127.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon

certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the San Antonio, Texas, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such amount not to exceed 4 cents per hundredweight as the Secretary may prescribe with respect to skim milk and butterfat (i) received from producers, (ii) received at a pool plant as other source milk and allocated to Class I milk, or (iii) distributed as Class I milk in the marketing area from a nonpool plant during such preceding month.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than February 1, 1962. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decision of the Assistant Secretary of Agriculture was issued December 11, 1961, and the decision containing all amendment provisions of this order, was issued January 9, 1962. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective February 1, 1962, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER. (Sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001-1011.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8(c) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as herein amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the San Antonio, Texas, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended to read as follows:

DEFINITIONS

§ 1127.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended, by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 1127.2 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the United States authorized to exercise the powers and to perform the duties of the said Secretary of Agriculture.

§ 1127.3 Person.

"Person" means any individual, partnership, corporation, association, or any other business unit.

§ 1127.4 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association (a) to have its entire activities under the control of its members, (b) to have full authority in the sale of milk of its members, and (c) to be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act".

§ 1127.5 San Antonio, Texas, marketing area.

"San Antonio, Texas, marketing area" hereinafter called the "marketing area" means all the territory including all municipal corporations and all Federal military reservations, facilities and installations located within the boundaries of Bexar County, Texas.

§ 1127.6 Distributing plant.

"Distributing plant" means all the buildings, premises, and facilities of a plant:

(a) Which is approved by an appropriate health authority having jurisdiction in the marketing area or by another health authority whose certification is accepted by such health authority for the processing of Grade A milk or which is acceptable to an agency of the Federal government for distribution of milk to its installations in the marketing area;

(b) In which milk or skim milk is processed or packaged; and

(c) From which Class I milk is disposed of during the month on routes in the marketing area or from which Class I milk is supplied to installations located in the marketing area of an agency of the Federal government.

§ 1127.7 Supply plant.

"Supply plant" means all the buildings, premises, and facilities of a plant

equipped to either receive or cool milk which is approved by the appropriate health authority to supply fluid milk for distribution as Grade A milk in the marketing area, and from which an amount equal to not less than 50 percent of its receipts from dairy farmers, who would be producers if the plant qualified as a pool plant, are shipped to a distributing plant during the month: *Provided*, That any plant which qualifies as a supply plant for each of the months of July through February shall be considered to be a supply plant for the following months of March through June of such year, except that if the operator of such plant files a written request with the market administrator, supply plant status shall be terminated as of the first of the following month.

§ 1127.8 Pool plant.

"Pool plant" means:

(a) A distributing plant (other than one exempt pursuant to § 1127.6) which disposes of as Class I milk on routes in the marketing area 15 percent or more of its receipts of milk during the month from pool plants and from dairy farmers conforming to the requirements set forth in § 1127.11;

(b) A supply plant; and

(c) Any plant approved by an appropriate health authority having jurisdiction in the marketing area to supply milk for distribution as Grade A milk in the marketing area which is operated by a cooperative association, and 50 percent or more of the producer milk of members is received during the month in the pool plants of other handlers, or is transferred to such plants from the plant of the cooperative association.

§ 1127.9 Nonpool plant.

"Nonpool plant" means any plant, other than a pool plant, engaged in receiving, manufacturing or distributing milk.

§ 1127.10 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any person in his capacity as the operator of a nonpool plant from which Class I milk is disposed of on routes in the marketing area;

(c) A cooperative association with respect to the milk of a member producer diverted to a nonpool plant for its ac-

count pursuant to § 1127.11 for each day's milk production that such producer's milk is diverted during the month. Milk so diverted shall be deemed to have been received by the association at a pool plant at the location of the pool plant at which the milk was received prior to diversion; and

(d) A cooperative association with respect to the producer milk of its members which is delivered directly from the farm to the pool plant of a handler in a tank truck owned and operated by or under contract to such cooperative association unless the cooperative association notifies the market administrator and the handler to whom the milk is delivered in writing, prior to the first day of the month, that it does not desire to be the handler for such milk. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the association at a pool plant at the location of the pool plant to which it is delivered.

§ 1127.11 Producer.

"Producer" means any person who produces milk, (a) under a dairy farm permit or rating for the production of milk to be disposed of for consumption as Grade A milk, issued by an appropriate health authority having jurisdiction in the marketing area or by another health authority whose certification is accepted by such health authority, or (b) which is acceptable to an agency of the Federal Government for fluid consumption in its institutions or bases located in the marketing area; which is received directly from the farm at a pool plant or diverted from a pool plant to a nonpool plant for the account of a cooperative association: *Provided*, That if the days of production of such person for which milk is diverted exceeds one-third of the days of production that milk is delivered to a pool plant during the month, such milk shall cease to be producer milk for the entire period of such diversion. This definition shall not include any person with respect to milk produced by him which is received by a handler partially exempt, pursuant to § 1127.60, nor shall it include a dairy farmer during the months of March through June, if milk from the same dairy farmer (or farm) was received at a nonpool plant operated by the same

handler, as other than producer milk, on more than half the days of delivery during the preceding months of July through February, except that in the application of this proviso to operations prior to July 1, 1961, the period from the effective date of this amended order through February 1961 shall be substituted for the period of July through February otherwise indicated.

§ 1127.12 Producer milk.

"Producer milk" means any skim milk or butterfat contained in milk of a producer received at a pool plant or diverted by a cooperative association in accordance with § 1127.10(c).

§ 1127.13 Other source milk.

"Other source milk" means all skim milk and butterfat:

(a) Other than that contained in producer milk or in receipts of fluid milk products from pool plants;

(b) In products designated as Class II milk pursuant to § 1127.41(b) from any source (including those of a plant's own production) which are reprocessed or converted to another product in the plant during the month; and

(c) In any disappearance of non-fluid milk products not otherwise accounted for.

§ 1127.14 Fluid milk products. "Fluid milk products" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, cream or any mixture of cream and milk or skim milk (except eggnog, cultured sour cream, frozen storage cream and bulk ice cream and frozen dairy product mixes).

§ 1127.15 Route.

"Route" means any delivery of Class I milk (including any delivery by a vendor or disposition at a plant store) to wholesale or retail outlets, except deliveries in bulk form to other pool plants.

MARKET ADMINISTRATOR**§ 1127.20 Designation.**

The agency for the administration of this part shall be a market administrator who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 1127.21 Powers.

The market administrator shall have the following powers with respect to this part:

- (a) To administer its terms and provisions;
- (b) To receive, investigate, and report to the Secretary complaints of violations;
- (c) To make rules and regulations to effectuate its terms and provisions; and
- (d) To recommend amendments to the Secretary.

§ 1127.22 Duties.

The market administrator shall:

- (a) Within 30 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary;
- (b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;
- (c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;
- (d) Pay out of the funds provided by § 1127.83 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses (except those incurred under § 1127.87) necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;
- (e) Keep such books and records as will clearly reflect the transactions provided for in this part, and, upon request by the Secretary, surrender the same to such other person as the Secretary may designate;
- (f) Submit his books and records to examination by the Secretary, and furnish such information and reports as the Secretary may request;
- (g) Verify all reports and payments of each handler by audit, or such other means as the market administrator finds necessary, of such handler's records and of the records of any other person upon whose utilization the classification of skim milk or butterfat for such handler depends;

- (h) Publicly announce, at his discretion, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, within 10 days after the day upon which he is required to perform such acts has not:

- (1) Made reports pursuant to §§ 1127.30 to 1127.31; or
- (2) Made payments pursuant to § 1127.61 and §§ 1127.80 to 1127.88.

- (i) On or before the twelfth day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report the milk so received shall be assigned to each class in the proportion that the total producer milk in each class is to the total receipts of producer milk by such handler;
- (j) Notify handlers and make announcement by such other means as he deems appropriate of prices as follows:
 - (1) On or before the tenth day of each month the Class I price for such month computed pursuant to § 1127.51 and the Class I butterfat differential computed pursuant to § 1127.53;
 - (2) On or before the fifth day of each month the prices of Class II and Class II-A milk for the preceding month computed pursuant to § 1127.52 and the butterfat differential for Class II and Class II-A milk computed pursuant to § 1127.53; and
 - (3) On or before the twelfth day of each month for the preceding month the uniform price computed pursuant to § 1127.71, and the butterfat differential to producers computed pursuant to § 1127.81.
- (k) Prepare and publish such statistics and information as he deems advisable and as do not reveal confidential information.

REPORTS, RECORDS, AND FACILITIES**§ 1127.30 Reports of receipts and utilization.**

On or before the 7th day after the end of each month, each handler shall report to the market administrator in the detail and on forms prescribed by the market administrator for each of his pool plants as follows:

- (a) The quantities of skim milk and butterfat contained in producer milk;
- (b) The quantities of skim milk and butterfat contained in (or represented by) receipts from pool plants;
- (c) The quantities of skim milk and butterfat contained in receipts of other source milk;

- (d) The quantities of skim milk and butterfat contained in receipts of Class II and Class II-A products disposed of in the form in which received without further processing or packaging by the handler;
- (e) The utilization of all skim milk and butterfat required to be reported pursuant to this section; and
- (f) Such other information with respect to the receipt and utilization of skim milk and butterfat as the market administrator may prescribe.

§ 1127.31 Reports of payments to producers.

On or before the 20th day after the end of each month, each handler who received milk from producers shall submit to the market administrator his producer payroll for the month, which shall show for each producer:

- (a) His total deliveries of milk;
- (b) The average butterfat content of such milk; and
- (c) The net amount of such handler's payments to such producer with the prices, deductions, and charges involved.

§ 1127.32 Records and facilities.

Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

- (a) The receipts and utilization of all skim milk and butterfat received from any source;
- (b) The weights and tests for butterfat and other content of all milk, skim milk, cream and other milk products handled;
- (c) Payments to producers and cooperative associations; and
- (d) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream and other milk products on hand at the beginning and end of each month.

§ 1127.33 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain. *Provided*, That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15) (A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly, upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION**§ 1127.40 Skim milk and butterfat to be classified.**

All skim milk and butterfat received within the month at a pool plant in the form of producer milk, other source milk, or receipts from other pool plants shall be classified by the market administrator pursuant to the provisions of §§ 1127.41 to 1127.46.

§ 1127.41 Classes of utilization.

Subject to the conditions set forth in §§ 1127.43 and 1127.44, the classes of utilization shall be as follows:

- (a) Class I milk shall be all skim milk (including reconstituted skim milk) and butterfat;

- (1) Disposed of in the form of fluid milk products: *Provided, however*, That when any such product is fortified with nonfat milk solids the amount of skim milk to be classified as Class I shall be only that amount equal to the weight of skim milk in an equal volume of unfortified product of the same nature and butterfat content;

- (2) Contained in inventories of fluid milk products on hand at the end of the month; and

- (3) All other skim milk and butterfat not specifically accounted for as Class II milk or Class II-A milk;

ceived in the form of condensed skim milk or nonfat dry milk;

(7) Subtract from the pounds of skim milk remaining in each class beginning with the lowest priced class the pounds of skim milk in other source milk received in the form of fluid milk products which were not subject to the Class I pricing and payment provisions of another order issued pursuant to the Act and on which a compensatory payment has not been paid under the order;

(8) Subtract from the pounds of skim milk remaining in each class beginning with the lowest priced class the pounds of skim milk in other source milk received in the form of fluid milk products which were subject to the Class I pricing and payment provisions of another order issued pursuant to the Act or on which a compensatory payment had been paid under another order;

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received from other pool plants according to the class to which they were assigned pursuant to § 1127.44(a);

(10) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (3) of this paragraph and if the pounds of skim milk remaining in all classes exceed the pounds of skim milk received from producers, subtract such excess from the pounds of skim milk remaining in the various classes in series beginning with the lowest priced class.

(b) Determine the pounds of butterfat in each class to be allocated to producer milk in the same manner prescribed for skim milk in paragraph (a) of this section.

(c) Determine the weighted average butterfat content of Class I, Class II, and Class II-A milk computed pursuant to paragraphs (a) and (b) of this section.

MINIMUM PRICES

§ 1127.50 Minimum prices.

Subject to the appropriate differentials computed pursuant to §§ 1127.53 and 1127.54 each handler shall pay in the manner set forth in §§ 1127.70 to 1127.86 for milk received at his pool plant from producers at not less than the prices per hundredweight set forth in §§ 1127.51 and 1127.52.

§ 1127.45 Computation of skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and for other obvious errors the report submitted by each handler and shall compute the pounds of skim milk and butterfat in each class of milk for such handler. Skim milk contained in any product utilized, produced, or disposed of by the handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such products, plus all of the water originally associated with such solids.

§ 1127.46 Allocation of skim milk and butterfat classified.

(a) The pounds of skim milk remaining in each class after making the following computations for each handler for each month shall be the pounds of skim milk in such class allocated to producer milk received by such handler during such month.

(1) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in fluid milk products which were on hand at the beginning of the month;

(2) Subtract from the pounds of skim milk in each class the pounds of skim milk received from other pool plants in a form other than milk, skim milk, or cream according to its classification pursuant to § 1127.41;

(3) Subtract from the pounds of skim milk remaining in Class II milk the plant shrinkage of skim milk in producer milk classified as Class II milk pursuant to § 1127.41(b) (3) (ii);

(4) Subtract from the pounds of skim milk in Class I milk the pounds of skim milk received from a nonpool plant in the form of packaged fluid milk products which are not in excess of the pounds of skim milk transferred to such plant from the pool plant of the handler in fluid form and classified as Class I milk;

(5) Subtract from the pounds of skim milk remaining in each class beginning with the lowest priced class the pounds of skim milk in other source milk which were received in the form of nonfluid milk products other than condensed skim milk or nonfat dry milk;

(6) Subtract from the pounds of skim milk remaining in each class beginning with the lowest priced class the pounds of skim milk in other source milk re-

§ 1127.44 Transfers.

Skim milk or butterfat transferred or diverted from a pool plant in the form of milk, skim milk, or cream shall be classified:

(a) As Class I milk, if transferred to the pool plant of another handler, unless utilization as Class II or Class II-A milk is mutually reported in writing to the market administrator by both handlers on or before the 7th day after the end of the month within which such transfer occurred, and the amount of skim milk or butterfat so assigned to Class II or Class II-A does not exceed the amount of skim milk or butterfat, respectively, remaining in Class II or Class II-A utilized by the transferee-handler after the subtraction of other source milk pursuant to § 1127.46: *Provided*, That the skim milk and butterfat so transferred shall be classified so as to result in a maximum assignment of producer milk first to Class I milk and secondly to Class II milk. In no case shall the assignment to Class I milk in the transferee plant be greater than the difference between its total receipts of milk and its total utilization of such milk in Class II and Class II-A.

(b) As Class I milk, if transferred or diverted to a nonpool plant except as:

(1) The transferring or diverting handler claims utilization as Class II milk or Class II-A milk;

(2) The operator of the nonpool plant maintains books and records showing the receipts and utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for the purpose of verification, in which case skim milk and butterfat so transferred or diverted shall be allocated to the highest use classification remaining after subtracting in series beginning with the highest use classification, the skim milk and butterfat in milk received at the nonpool plant directly from dairy farmers who the market administrator determines constitute its regular source of supply for Class I milk.

(c) As Class II milk if transferred subject to verification by the market administrator to a wholesale food manufacturing establishment which has no Class I disposition of skim milk or butterfat.

(b) Class II milk shall be all skim milk and butterfat:

(1) Used to produce any product other than those designated as Class I in paragraph (a) of this section or as Class II-A in paragraph (c) of this section;

(2) Disposed of for livestock feed;

(3) In shrinkage allocated to (i) receipts of other source milk in the form of fluid milk products, (ii) receipts of producer milk in an amount not to exceed one-half of one percent of the total receipts of skim milk and butterfat received from producers at the pool plant, plus one and one-half percent of the total pounds of skim milk and butterfat in milk received at a pool plant from producers and in bulk as milk in fluid form from other pool plants (including milk received from a cooperative association in its capacity as a handler pursuant to § 1127.10(d)) and which are not disposed of in bulk as milk in fluid form to another pool plant;

(4) Skim milk contained in any forfeited product designated in subparagraph (a) (1) of this section in excess of the pounds of skim milk in such product classified as Class I pursuant to such subparagraph; and

(c) Class II-A milk shall be all skim milk and butterfat used to produce Cheddar cheese.

§ 1127.42 Shrinkage.

The market administrator shall allocate shrinkage to a handler's receipts at pool plants as follows:

(a) Compute the total shrinkage of skim milk and butterfat; and

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat in milk of producers and other source milk received in the form of fluid milk products.

§ 1127.43 Responsibility of handlers and reclassification of milk.

(a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise.

(b) Any skim milk or butterfat classified as Class II or Class II-A shall be reclassified if such skim milk or butterfat is later disposed of (whether in original or other form) in another classification.

Secretary determines, a greater quantity of Class I milk is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area, but which plant is fully regulated under such other Federal order.

§ 1127.61 Handlers operating nonpool plants.

Each handler who is the operator of a nonpool plant whose milk is not subject to the classification and Class I pricing provisions of another order issued pursuant to the Act shall report, as required pursuant to § 1127.30, reporting receipts from dairy farmers in lieu of such information with respect to producers, shall allow verification of such reports, and on or before the 13th day of each month he shall pay to the market administrator an amount computed by multiplying the total volume of Class I milk disposed of on routes in the marketing area from such nonpool plant during the preceding month by the rate of compensatory payments computed pursuant to § 1127.65.

UNPRICED MILK

§ 1127.65 Rate of payment on unpriced milk.

The rate of payment per hundredweight applicable to other source milk which has not been subject to the classification and Class I pricing provisions of another order issued pursuant to the Act or on which a compensatory payment has not been made pursuant to another order and which is assigned to Class I use at pool plants or which is disposed of as Class I milk on routes in the marketing area from nonpool plants shall be calculated as follows:

- (a) For the months of February through July, subtract the Class II prices adjusted by the Class II butterfat differential, from the Class I price, adjusted by the Class I butterfat differential, and, except in the case of condensed skim milk and nonfat dry milk, by the location adjustment pursuant to § 1127.54 which would be applicable if the nonpool plant were a pool plant; and
- (b) During the months of January and August, subtract from the Class I price, adjusted by the Class I butterfat differential, the uniform price to producers, adjusted by the Class I butterfat differential.

available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATIONS OF PROVISIONS

§ 1127.60 Handlers subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a) or (b) of this section except that the operator thereof shall, with respect to total receipts of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator, and, in the event he has disposed of on routes in the marketing area Class I milk which was neither classified nor priced under such other order or on which a compensatory payment was not made under any other order, shall pay to the market administrator on or before the 13th day of each month an amount computed by multiplying the total volume of such Class I milk disposed of on routes in the marketing area from such plant during the preceding month by the rate of compensatory payment computed pursuant to § 1127.65.

(a) A plant meeting the requirements for pooling pursuant to § 1127.8(a) which also meets the pooling requirements of another Federal order and from which the Secretary determines, a greater quantity of Class I milk is disposed of during the month on routes in such other Federal order marketing area than was disposed of on routes in this marketing area, except that if such plant was subject to all of the provisions of this part in the immediately preceding month, it shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its Class I route disposition is made in such other marketing area unless notwithstanding the provisions of this paragraph it is fully regulated under such other order.

(b) A plant meeting the requirements for pooling pursuant to § 1127.8(a) which also meets the pooling requirements of another Federal order on the basis of route distribution in such other marketing area and from which, the

than 4.0 percent, there shall be added to the respective class price, computed pursuant to §§ 1127.51 and 1127.52 for each one-tenth of 1 percent, that the average butterfat content of such milk is above 4.0 percent, or subtracted for each one-tenth of 1 percent that such average butterfat content is below 4.0 percent, an amount equal to the butterfat differential computed by multiplying the simple average, as computed by the market administrator, of the daily wholesale prices per pound (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter at Chicago as reported by the United States Department of Agriculture during the appropriate month by the applicable factor listed below:

- (a) *Class I milk.* Multiply such price for the preceding month by 0.125;
- (b) *Class II and Class II-A milk.* Multiply such price for the current month by 0.108.

§ 1127.54 Location adjustment credit to handlers.

For milk which is received from producers at a pool plant located more than 50 miles from the City Hall, in San Antonio, Texas, by the shortest hard-surfaced highway distance as determined by the market administrator and which is classified as Class I milk, the price specified in § 1127.51 shall be reduced 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is distant from the City Hall in San Antonio, Texas: *Provided*, That in calculating such adjustments, transfers to a pool plant at which a location adjustment is not applicable or at which it is less than at the transferor plant may be assigned to Class I only to the extent that Class I disposition at the transferee plant exceeds 95 percent of the receipts from producers, and a cooperative association(s) in its capacity as a handler pursuant to § 1127.10(d) at such plant. Such assignment to transferor plants shall be made first to plants at which no location adjustment credit is applicable and then in sequence to plants at which the lowest rate of such adjustment credit would apply.

§ 1127.55 Use of equivalent prices.

If for any reason the price quotation required by this part for computing class prices or for any other purpose is not

§ 1127.51 Class I milk.

The Class I milk price shall be the price for Class I milk established under Federal Order No. 126 regulating the handling of milk in the North Texas marketing area plus 42 cents.

§ 1127.52 Class II and Class II-A milk.

(a) *Class II milk.* During April, May, and June, the price per hundredweight for Class II milk shall be the price computed pursuant to subparagraph (1) of this paragraph, less 14 cents or the price computed pursuant to paragraph (b) of this section, whichever is higher. During all other months, the Class II price shall be the price computed pursuant to subparagraph (1) of this paragraph or paragraph (b) of this section, whichever is higher.

(1) The sum of the amounts computed pursuant to subdivisions (i) and (ii) of this subparagraph, rounded to the nearest cent:

- (i) Multiply by 4.4, the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the United States Department of Agriculture during the month;
- (ii) From the average of the carlot prices per pound of nonfat dry milk for human consumption, spray process, f.o.b. manufacturing plants in the Chicago area as reported by the United States Department of Agriculture for the period from the 26th day of the preceding month through the 25th day of the current month, subtract 5 cents and multiply by 8.16.

(b) *Class II-A milk.* The minimum price per hundredweight to be paid by each handler for milk received at his plant from producers and classified as Class II-A milk shall be computed by multiplying by 8.4 the average of the daily prices paid per pound of cheese at Wisconsin Primary markets ("Cheedars" f.o.b. Wisconsin assembling points, cars or truckloads) as reported by the Department for the month involved and rounding to the nearest cent.

§ 1127.53 Butterfat differentials to handlers.

If the average butterfat content of the milk of any handler allocated to any class pursuant to § 1127.46 is more or less

DETERMINATION OF UNIFORM PRICES TO PRODUCERS

§ 1127.70 Computation of value of milk for each handler.

For each month the market administrator shall compute the value of milk for each handler as follows:

(a) *Handlers who receive milk from producers:*

(1) Multiply the quantity of producer milk in each class computed pursuant to § 1127.46 by the applicable class price;

(2) If any overage has been deducted pursuant to § 1127.46 (a) and (b), multiply such amount by the applicable class price;

(3) For the months of January through August, multiply the hundredweight of other source skim milk and butterfat subtracted from Class I milk pursuant to § 1127.46 (a) (5) through (7) and (b) by the applicable rate determined pursuant to § 1127.65; and

(4) Add together the resulting amounts in (1) through (3) of this paragraph.

(b) *Handlers who operate pool plants but who receive no milk from producers:*

(1) If any overage has been deducted pursuant to § 1127.46 (a) and (b), multiply such amount by the applicable class price;

(2) For the months of January through August, multiply the hundredweight of other source skim milk and butterfat subtracted from Class I milk pursuant to § 1127.46 (a) (5) through (7) and (b) by the applicable rate determined pursuant to § 1127.65; and

(3) Add the resulting amounts in (1) and (2) of this paragraph.

§ 1127.71 Computation of uniform price for pool milk.

For each month the market administrator shall compute the uniform price for all milk received from producers as follows:

(a) Combine into one total the amounts computed pursuant to § 1127.70 (a) and (b) for all handlers who made the reports prescribed in § 1127.30 and who are not in default of payments required pursuant to §§ 1127.80 and 1127.84;

(b) Add an amount representing not less than one-half of the unobligated cash balance in the producer-settlement fund account pursuant to § 1127.83;

(c) Add the total value of the location adjustments to producers computed pursuant to § 1127.82;

(d) Subtract if the average butterfat content of the producer milk of handlers included in the computations pursuant to paragraph (a) of this section is greater than 4.0 percent, or add if such average is less than 4 percent, an amount computed by multiplying the amount by which such average butterfat content varies from 4.0 percent by the butterfat differential computed pursuant to § 1127.81 and multiply the resulting amount by the hundredweight of such milk;

(e) Divide by the total hundredweight of producer milk of handlers included in the computation pursuant to paragraph (a) of this section;

(f) Subtract not less than 4 cents nor more than 5 cents. The resulting figure shall be the uniform price per hundredweight for all milk of 4.0 percent butterfat content received from producers.

PAYMENT FOR MILK

§ 1127.80 Time and method of payment.

(a) Each handler shall pay to a cooperative association on or before the 13th day of the month, for milk received from it during the preceding month for which such association is a handler pursuant to § 1127.10 (d), the value of such milk at not less than the applicable class prices: *Provided, however*, That for each hundredweight of milk so received during the first 15 days of any month, such handler shall, upon written request of the cooperative association make an advance payment to such association by the 26th day of the month at not less than the Class II price of the preceding month, in which case the obligation of the handler otherwise payable on or before the 13th day of the following month shall be reduced by the amount of such advance payment.

(b) Except as provided in paragraph (3) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(1) On or before the last day of each month, for milk received during the first 15 days of such month at not less than the price per hundredweight for Class II milk for the preceding month;

(2) On or before the 15th day after the end of the month during which the milk was received at not less than the uniform price per hundredweight computed for such month pursuant to § 1127.71 subject to the following adjustments: (i) the butterfat differential pursuant to § 1127.81, (ii) the location adjustment pursuant to § 1127.82, (iii) the payment made pursuant to subparagraph (1) of this section, (iv) marketing service deductions pursuant to § 1127.87, and (v) proper deductions authorized by such producer: *Provided*, That if by such date such handler has not received full payment pursuant to § 1127.85, he may reduce his total payment to all producers pro rata by not more than the amount of reduction in payments from the market administrator; he shall, however, complete such payments pursuant to this subparagraph not later than the date for making such payments next following receipt of the balance due from the market administrator;

(3) (i) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association, each handler shall on or before the 20th day of each month furnish the cooperative association information showing the daily and total pounds of milk received from each of the association's member producers for the first 15 days of such month and, on or before the 10th day after the end of each month, such information for the 16th through the end of such month, and shall pay to such association on or before the 26th and 13th day of each month, in lieu of payments pursuant to subparagraphs (1) and (2) respectively, of this paragraph an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or

until the original request is rescinded in writing by the cooperative association.

(i) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(4) In making the payments to producers pursuant to subparagraphs (2) and (3) of this paragraph, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show:

(i) The month for which payment is made and the identity of the handler and of the producer;

(ii) The total pounds and average butterfat test of milk received from such producer;

(iii) The minimum rate or rates at which payment to such producer is required;

(iv) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(v) The amount or rate per hundredweight of each deduction claimed by the handler; together with a description of the respective deductions; and

(vi) The net amount of payment to such producer.

§ 1127.81 Producer butterfat differential.

In making payments pursuant to § 1127.80 there shall be added to the uniform price for each one-tenth of one percent that the average butterfat content of such milk is above 4.0 percent not less than, or there may be deducted from the uniform price for each one-tenth of one percent that the average butterfat content of such milk is below 4.0 percent not more than an amount computed as follows: Multiply by 1.1 the simple average computed by the market administrator of the daily whole-sale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the

§ 1127.36 Adjustment of accounts.

Whenever audit by the market administrator of any handler's books, reports, records, or accounts discloses errors resulting in money due:

- (a) The market administrator from such handler;
- (b) Such handler from the market administrator; or
- (c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payment set forth in the provisions under which such error occurred.

§ 1127.37 Marketing service.

- (a) *Marketing service deduction.* Except as set forth in paragraph (b) of this section each handler, in making payments to producers (other than himself) shall make a deduction of six cents per hundredweight of milk or such lesser deduction as the Secretary from time to time may prescribe. Such deductions shall be paid by the handler to the market administrator on or before the 15th day after the end of the month. Such moneys shall be expended by the market administrator for verification of weights and tests of milk received from such producers and in providing market information to such producers.
- (b) *Marketing service deduction with respect to producers who are members of or are marketing through a cooperative association.* In the case of each producer who is a member of, or who has given written authorization for the rendering of marketing services and the taking of a deduction therefor to a cooperative association, which the Secretary has determined is performing the services described in paragraph (a) of this section, such handler, in lieu of the deduction specified under paragraph (a) of this section, shall deduct from the payments to such producer the amount per hundredweight specified by such association which is not in excess of the rate authorized by such producer and shall pay such deduction to the cooperative association entitled to receive it on or before the 15th day after the end of the month during which such milk was received.

United States Department of Agriculture during the month, divide the result by 10 and round to the nearest one-tenth of a cent.

§ 1127.32 Location adjustment to producers.

In making payments to producers pursuant to § 1127.80 for that milk which is received from producers at a pool plant located more than 50 miles from the City Hall in San Antonio, Texas, by the shortest hard-surfaced highway distance as determined by the market administrator, the handler may deduct an amount equal to not more than 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is distant from the City Hall in San Antonio, Texas.

§ 1127.33 Producer-settlement fund.

The market administrator shall establish a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers, pursuant to §§ 1127.60, 1127.61, 1127.84, and 1127.86 and out of which he shall make all payments, pursuant to §§ 1127.85 and 1127.86.

§ 1127.34 Payments to the producer-settlement fund.

On or before the 13th day after the end of each month each handler, including a cooperative association which is a handler, shall pay to the market administrator the amount by which the value of milk for such handler pursuant to § 1127.70, for such month exceeds the obligation pursuant to § 1127.80(b) of such handler to producers for milk received during the month.

§ 1127.35 Payments out of the producer-settlement fund.

On or before the 14th day after the end of the month during which the milk was received, the market administrator shall pay to each handler, including a cooperative association which is a handler, the amount, if any, by which the value of the milk received by such handler from producers during the month as determined pursuant to § 1127.70 is less than the value of such milk calculated at the uniform price adjusted by the producer butterfat differential and the location adjustment to producers.

§ 1127.88 Payment of administration expense.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may from time to time prescribe, with respect to skim milk and butterfat (a) received from producers, (b) received at a pool plant as other source milk and allocated to Class I milk, or (c) distributed as Class I milk in the marketing area from a nonpool plant during such preceding month.

§ 1127.89 Termination of obligation.

The provisions of this section shall apply to any obligation under this part for the payment of money.

- (a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to the following information:

- (1) The amount of the obligation;
 - (2) The delivery period during which the milk, with respect to which the obligation exists, was received or handled; and
 - (3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.
- (b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market

administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

- (c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

- (d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the agreement (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 1127.90 Effective time.

The provisions of this part or any amendment to this part shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 1127.91.

§ 1127.91 Suspension or termination.

The Secretary may suspend or terminate this part or any provision of this part whenever he finds this part or any provision of this part obstructs or does not tend to effectuate the declared policy of the Act. This part shall terminate in any event whenever the provisions of the Act authorizing it cease to be in effect.

§ 1127.92 Continuing obligations.

If, upon the suspension or termination of any or all provisions of this part there

and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1127.100 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

§ 1127.101 Separability of provisions.

If any provision of this part or its application to any person or circumstances is held invalid, the application of such provision, and the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

Effective date: February 1, 1962.

Signed at Washington, D.C., on January 30, 1962.

CHARLES S. MURPHY,
Under Secretary.

[F.R. Doc. 62-1150; Filed, Feb. 2, 1962; 8:46 a.m.]

are any obligations thereunder the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 1127.93 Liquidation.

Upon the suspension or termination of the provisions of this part, except this section, the market administrator, or such other liquidating agent as the Secretary may designate, shall if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator

[Milk Order 129]

PART 1129—MILK IN AUSTIN-WACO MARKETING AREA

Order Amending Order

Sec.
1129.0

Findings and determinations.

DEFINITIONS

1129.1

Act.

1129.2

Secretary.

1129.3

Department.

1129.4

Person.

1129.5

Cooperative association.

1129.6

Austin-Waco marketing area.

1129.7

Zone I.

1129.8

Distributing plant.

1129.9

Supply plant.

1129.10

Fluid milk plant.

1129.11

Nonfluid milk plant.

1129.12

Approved plant.

1129.13

Handler.

1129.14

Route.

1129.15

Producer.

1129.16

Producer milk.

1129.17

Other source milk.

1129.18

Producer-handler.

1129.19

Chicago butter price.

MARKET ADMINISTRATOR

1129.20

Designation.

1129.21

Powers.

1129.22

Duties.

REPORTS, RECORDS AND FACILITIES

1129.30

Reports of receipts and utilization.

1129.31

Payroll reports.

1129.32

Other reports.

1129.33

Records and facilities.

1129.34

Retention of records.

CLASSIFICATION

1129.40

Skim milk and butterfat to be classified.

1129.41

Classes of utilization.

1129.42

Shrinkage.

1129.43

Responsibility of handlers and reclassification of milk.

1129.44

Transfers.

1129.45

Computation of the skim milk and butterfat in each class.

1129.46

Allocation of skim milk and butterfat classified.

MINIMUM PRICES

1129.50

Class I milk.

1129.51

Class II milk.

1129.52

Butterfat differential to handlers.

1129.53

Location adjustments to handlers.

1129.54

Use of equivalent prices.

APPLICATION OF PROVISIONS

1129.60

Producer-handlers.

1129.61

Plants subject to other federal orders.

DETERMINATION OF UNIFORM PRICE

Sec.

1129.70

Net obligation of handlers.

1129.71

Computation of aggregate value used to determine uniform prices.

1129.72

Computation of uniform prices for handlers.

PAYMENTS

1129.90

Payments to producers.

1129.91

Butterfat differential to producers.

1129.92

Location differential to producers.

1129.93

Adjustment of accounts.

1129.94

Marketing services.

1129.95

Expense of administration.

1129.96

Termination of obligations.

EFFECTIVE TIME, SUSPENSION, OR TERMINATION

1129.100

Effective time.

1129.101

Suspension or termination.

1129.102

Continuing obligations.

1129.103

Liquidation.

MISCELLANEOUS PROVISIONS

1129.110

Agents.

1129.111

Separability of provisions.

AUTHORITY: §§ 1129.0 to 1129.111 issued under secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 1129.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Austin-Waco marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in this order, are in the current of interstate commerce or directly burden, obstruct or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler as his pro rata share of such expense, 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as the Secretary may prescribe with respect to all (a) receipts of producer milk including such handler's own production, (b) other source milk at a fluid milk plant which is classified as Class I milk and, (c) Class I milk disposed of during the month on routes (including routes operated by vendors) to retail or wholesale outlets (except fluid milk plant) located in the marketing area from a nonfluid milk plant.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than February 1, 1962. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decision of the Assistant Secretary of Agriculture was issued December 11, 1961, and the decision containing all amendment provisions of this order, was issued January 9, 1962. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for

handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective February 1, 1962, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the *FEDERAL REGISTER*, (Sec. 4(c) Administrative Procedure Act, 5 U.S.C. 1001-1011.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8(c) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as herein amended; and

(3) The issuance of the order amending the order is approved or favored by at least three-fourths of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Austin-Waco marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended as follows:

DEFINITIONS

§ 1129.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 1129.2 Secretary.

"Secretary" means the Secretary of Agriculture or such other officer or employee of the United States as is authorized to exercise the powers or to perform the duties of the said Secretary of Agriculture.

§ 1129.3 Department.

"Department" means the United States Department of Agriculture or such other Federal agency as is authorized to perform the price reporting functions specified in this part.

§ 1129.4 Person.

"Person" means any individual, partnership, corporation, association, or any other business unit.

§ 1129.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 10, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members.

§ 1129.6 Austin-Waco marketing area.

"Austin-Waco Marketing Area" hereinafter called the marketing area means all territory, including all municipal corporations and all Federal military reservations, facilities and installations, located within or partially within the boundaries of Travis, Hays, Lampasas, Burnet, Caldwell, Bastrop, Williamson, Bell, Falls, McLennan, Coryell, Comal and Guadalupe Counties, all in the State of Texas.

§ 1129.7 Zone I.

"Zone I" means all territory south of the northern boundaries of Guadalupe, Comal, Kendall, Kerr, Edwards and Val Verde Counties, all in the State of Texas and all territory south of a boundary formed by United States Highway 90 east of the marketing area to the Colorado River and thence south along the Colorado River.

§ 1129.8 Distributing plant.

"Distributing plant" means any milk processing or packaging plant from which Class I milk equal to more than an average of 500 pounds per day or 5 percent, whichever is less, of the Grade "A" milk and skim milk received from dairy farmers or other plants, is disposed of during the month on a route(s) oper-

ated partially or wholly in the marketing area.

§ 1129.9 Supply plant.

"Supply plant" means any plant from which fluid milk, fluid skim milk or cream is received at a distributing plant:

(a) For any of the months of February through July, on four or more days during the month, or in an amount equal to a daily average of not less than 3,300 pounds for such month; and

(b) For any of the months of August through January:

(1) On ten or more days during the month, or in an amount equal to a daily average of not less than 8,300 pounds for such month; or

(2) On four or more days during the month, or in an amount equal to a daily average of not less than 3,300 pounds for such month, and such plant was a supply plant pursuant to (a) during any month of the immediately preceding period of February through July.

§ 1129.10 Fluid milk plant.

"Fluid milk plant" means (a) a distributing plant or a supply plant, and (b) any plant approved by the appropriate health authority to supply milk for distribution as Grade A milk in the marketing area if such plant is operated by a cooperative association, and 75 percent or more of the milk of the members of such association, including receipts pursuant to § 1129.13(b), is received at the fluid milk plants of other handlers.

§ 1129.11 Nonfluid milk plant.

"Nonfluid milk plant" means any milk manufacturing, processing, or bottling plant other than a fluid milk plant.

§ 1129.12 Approved plant.

"Approved plant" means: (a) A fluid milk plant, (b) any milk plant from which Class I milk is disposed of on a route in the marketing area.

§ 1129.13 Handler.

"Handler" means (a) any person in his capacity as the operator of one or more approved plants, and (b) a cooperative association with respect to the milk of any producer (1) which it diverts to a nonfluid milk plant, or (2) which it causes to be delivered directly from the farm, in bulk tank pickup truck(s) owned and/or controlled by such association, to the fluid milk plant of an-

duced by a producer and received at a fluid milk plant directly from producers or diverted from such a plant pursuant to § 1129.15.

§ 1129.17 Other source milk.

"Other source milk" means all skim milk and butterfat contained in:

- Receipts during the month in the form of products designated as Class I milk pursuant to § 1129.41(a) (1), except (1) such products received from other fluid milk plants, or (2) producer milk; and
- Products designated as Class II milk pursuant to § 1129.41(b) (1) from any source (including those produced at the plant) which are reprocessed or converted into another product during the month.

§ 1129.18 Producer-handler.

"Producer-handler" means a person who operates both a dairy farm(s) and a milk processing or bottling plant at which milk is received from the dairy farm(s) of such person but from no other dairy farm: *Provided*, That such person shall furnish to the market administrator for his verification, subject to review by the Secretary, evidence that the maintenance, care and management of the dairy animals and other resources necessary for the production of milk in his name are and continue to be the personal enterprise of and at the personal risk of such producer and the processing, packaging and distribution of the milk are and continue to be the personal enterprise of and at the personal risk of such producer in his capacity as a handler.

§ 1129.19 Chicago butter price.

"Chicago butter price" means the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of 92-score bulk creamery butter at Chicago as reported during the month by the Department.

MARKET ADMINISTRATOR

§ 1129.20 Designation.

The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject

to removal at the discretion of, the Secretary.

§ 1129.21 Powers.

The market administrator shall have the following powers with respect to this part:

- To administer its terms and provisions;
- To receive, investigate, and report to the Secretary complaints of violations;
- To make rules and regulations to effectuate its terms and provisions; and
- To recommend amendments to the Secretary.

§ 1129.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

- Within 45 days following the date on which he enters upon his duties or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;
- Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;
- Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;
- Pay out of the funds provided by § 1129.95 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses (except those incurred under § 1129.94) necessarily incurred by him in maintenance and functioning of his office and in the performance of his duties;
- Keep such books and records as will clearly reflect the transactions provided for in this part, and, upon request by the Secretary, surrender the same to such other person as the Secretary may designate;
- Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;
- Verify all reports and payments of each handler by audit of such handler's records and the records of any

other handler or person upon whose disposition of milk such handler claims classification of skim milk and butterfat and by such investigation as the market administrator deems necessary;

(h) Publicly announce, at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, after the date upon which he is required to perform such acts, has not made reports pursuant to § 1129.30 to § 1129.32, inclusive, or payments pursuant to § 1129.90 to § 1129.93, inclusive;

(i) Publicly announce, by posting in a conspicuous place in his office and by such other means as he deems appropriate, and notify each handler in writing:

- On or before the 6th day of each month, the minimum price for Class I milk computed pursuant to § 1129.50 and the Class I butterfat differential computed pursuant to § 1129.52(a), both for the current month, and the minimum price for Class II milk computed pursuant to § 1129.51 and the Class II butterfat differential computed pursuant to § 1129.52(b), both for the previous month; and
- On or before the 12th day after the end of each of the months, the uniform price for each handler computed pursuant to § 1129.72 and the butterfat differential computed pursuant to § 1129.91;
- On or before the 12th day after the end of each month, mail to each handler at his last known address, a statement showing for such handler:

- The amount and value of producer milk in each class and the totals thereof;
- On or before the 12th day after the end of each month, report to each cooperative association, which so requests, the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report, the milk so received shall be prorated to each class in the proportion that the total receipts of milk from producers by such handler were used in each class;
- Prepare and make available for the benefit of producers, consumers, and handlers such general statistics and such

information concerning the operations hereof as are necessary and essential to the proper functioning of this part; and (m) Upon request, furnish to a cooperative association for its members the data reported pursuant to § 1129.31 (a), (b) and (c).

REPORTS, RECORDS AND FACILITIES

§ 1129.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler, except a producer-handler, shall report to the market administrator in the detail and on forms prescribed by the market administrator for each of his approved plants as follows:

- (a) The quantities of skim milk and butterfat contained in milk received from each producer;
- (b) The quantities of skim milk and butterfat contained in products designated as Class I milk pursuant to § 1129.41(a) received from fluid milk plants of other handlers;
- (c) The quantities of skim milk and butterfat in other source milk;
- (d) The quantities of skim milk and butterfat contained in inventories of products designated as Class I milk pursuant to § 1129.41(a) on hand at the beginning and end of the month;
- (e) The utilization of all skim milk and butterfat required to be reported pursuant to this section including a statement of the disposition of Class I milk outside the marketing area; and
- (f) Such other information with respect to receipts and utilization as the market administrator may prescribe.

§ 1129.31 Payroll reports.

On or before the 20th day of each month each handler, except a producer-handler, shall submit to the market administrator his producer payroll for deliveries of milk for the preceding month for each of his fluid milk plants which shall show for each producer:

- (a) His name and address;
- (b) The total pounds and the average butterfat test of milk received;
- (c) The number of days if less than the entire month for which milk was received;
- (d) Net amount of such handler's payment, together with the price(s) paid and the nature and amount of any deductions.

§ 1129.32 Other reports.

- (a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe;
- (b) Each handler, who causes milk to be diverted for his account directly from producers' farms to an unapproved plant, shall prior to such diversion, report to the market administrator and to the cooperative association, of which such producer is a member, his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

§ 1129.33 Records and facilities.

Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

- (a) The receipts and utilization of all receipts of producer milk and other source milk;
- (b) The weights and tests for butterfat and other content of all milk, skim milk, cream and other milk products handled;
- (c) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream and milk products on hand at the beginning and end of each month; and
- (d) Payments to producers and cooperative associations including any deductions authorized by producers and disbursement of money so deducted.

§ 1129.34 Retention of records.

All books and records required under this subpart to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided*, That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records is necessary in connection with a proceeding under section 8e(15) (A) of the act or a court action specified in such notice the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either

case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 1129.40 Skim milk and butterfat to be classified.

All skim milk and butterfat at fluid milk plants which is required to be reported for the month pursuant to § 1129.30, shall be classified by the market administrator pursuant to the provisions of §§ 1129.41 to 1129.46, inclusive.

§ 1129.41 Classes of utilization.

Subject to the conditions set forth in §§ 1129.43 and 1129.44, the classes of utilization shall be as follows:

- (a) *Class I milk*. Class I milk shall be all skim milk (including reconstituted skim milk) and butterfat (1) disposed of in fluid form as milk, skim milk, buttermilk, flavored milk drinks, cream, cultured sour cream, any mixture of cream and milk or skim milk (other than frozen storage cream, aerated cream products, eggnog, ice cream mix or other frozen mixes, evaporated or condensed milk and any milk product contained in hermetically sealed containers); *Provided, however*, That when any such product is fortified with nonfat milk solids the amount of skim milk to be classified as Class I shall be only that amount equal to the weight of skim milk in an equal volume of unfortified product of the same nature and butterfat content, and (2) not accounted for as Class II milk.

- (b) *Class II milk*. Class II milk shall be all skim milk and butterfat:

- (1) Used to produce any product other than those designated as Class I milk pursuant to paragraph (a) of this section;
- (2) Disposed of and used for livestock feed;
- (3) Contained in inventory of milk and milk products designated as Class I milk pursuant to subparagraph (a) (1) of this section on hand at the end of the month;
- (4) In shrinkage not to exceed 2 percent of skim milk and butterfat, respectively, in producer milk and other source milk; and
- (5) Skim milk contained in any fortified product consigned pursuant to par-

agraph (a) (1) of this section in excess of the pounds of skim milk in such product classified as Class I pursuant to such subparagraph.

§ 1129.42 Shrinkage.

The market administrator shall assign shrinkage at the fluid milk plant(s) of each handler as follows:

- (a) Compute the shrinkage of skim milk and butterfat classified as Class II milk; and
- (b) Assign the amounts pro rata to the handler's receipts of skim milk and butterfat, respectively, in producer milk and in other source milk.

§ 1129.43 Responsibility of handlers and reclassification of milk.

- (a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified as Class II milk;
- (b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

§ 1129.44 Transfers.

Skim milk or butterfat disposed of each month from a fluid milk plant shall be classified:

- (a) In the classification indicated by both handlers in their reports submitted for the month to the market administrator pursuant to § 1129.30 if transferred in the form of products designated as Class I milk in § 1129.41(a) (1) to a fluid milk plant of another handler, except a producer-handler: *Provided*, That the percentage of the total quantities of skim milk and butterfat, respectively, in products thus transferred and assigned to Class I milk shall not be greater than the percentage of skim milk and butterfat in producer milk classified as Class I milk in the plant of the transferee handler: *And provided further*, That if either or both handlers have other source milk during the month, the skim milk or butterfat so transferred shall be classified at both plants so as to allocate the greatest possible Class I utilization to the producer milk of both handlers;

- (b) As Class I milk, if transferred to a producer-handler in the form of products designated as Class I milk in § 1129.41(a) (1);

(c) As Class I milk, if transferred or diverted in the form of milk, skim milk or cream in bulk to a nonfluid milk plant located more than 400 miles distant by the shortest highway distance as determined by the market administrator;

(d) As Class I milk, if transferred or diverted in the form of milk, skim milk or cream in bulk to a nonfluid milk plant located not more than 400 miles distant by the shortest highway distance as determined by the market administrator, unless the following conditions are met:

(1) The transferring-handler claims Class II utilization in a product specified in § 1129.41(b);

(2) The operator of such nonfluid milk plant keeps adequate books and records showing the utilization of all skim milk and butterfat received at such plant and the market administrator is permitted to examine such books and records for the purpose of verification; and

(3) The Class I milk, as defined pursuant to § 1129.41(a) in such nonfluid milk plant does not exceed the receipts of skim milk and butterfat in milk received during the month from dairy farmers, who the market administrator determines, constitute the regular source of supply for such plant: *Provided*, That any Class I milk in excess of receipts from such dairy farmers shall be assigned to milk, skim milk, or cream so transferred or diverted.

§ 1129.45 Computation of the skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and for other obvious errors the reports of receipts and utilization for the fluid milk plant(s) of each handler and shall compute the pounds of butterfat and skim milk in Class I milk and Class II milk for such handler: *Provided*, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids.

§ 1129.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1129.45 the market administrator shall determine the classification of producer milk received at the fluid milk plant(s) of each handler each month as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk assigned to producer milk pursuant to § 1129.42(b);

(2) Subtract from the pounds of skim milk in Class I milk the pounds of skim milk received as Class I products in consumer packages from a nonfluid milk plant which are not in excess of the pounds of skim milk transferred or diverted by the handler to such nonfluid milk plant as Class I milk;

(3) Subtract from the remaining pounds of skim milk in series beginning with Class II milk, the pounds of skim milk contained in inventory on hand at the beginning of the month and classified pursuant to § 1129.41(b)(3);

(4) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk contained in products designated as Class I milk in § 1129.41(a)(1) received from the fluid milk plants of other handlers and in milk received from a cooperative association in its capacity as a handler pursuant to § 1129.13(b)(2), according to the classification of such skim milk as determined pursuant to § 1129.44(a);

(5) Add to the remaining pounds of skim milk in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

(6) If the remaining pounds of skim milk in both classes exceed the pounds of skim milk contained in producer milk, subtract such excess from the remaining pounds of skim milk in series beginning with Class II milk. Any amount so subtracted shall be known as "overage."

(b) Butterfat shall be allocated in accordance with the same procedure outlined for skim milk in paragraph (a) of this section;

(c) Determine the weighted average butterfat content of the Class I and Class II milk allocated to producer milk.

MINIMUM PRICES

§ 1129.50 Class I milk.

Subject to the provisions of §§ 1129.52 and 1129.53 the minimum price per hundredweight to be paid by each handler for producer milk received at his fluid milk plant and classified as Class I milk shall be the price for Class I milk established under Federal Order No. 126 regulating the handling of milk in the North Texas marketing area, plus 38 cents.

§ 1129.51 Class II milk.

Subject to provisions of § 1129.52 the minimum price per hundredweight to be paid by each handler for producer milk received at his fluid plant and classified as Class II milk shall be the price computed pursuant to paragraph (a) of this section, less 14 cents or the price computed pursuant to paragraph (b) of this section, whichever is higher, during April, May, and June; and for each of the other months, the price computed pursuant to paragraph (a) or paragraph (b) of this section, whichever is higher:

(a) The sum of the plus values computed as follows:

(1) Subtract 3 cents from the Chicago butter price, add 20 percent thereof, and multiply by 4.0.

(2) From the simple average, as computed by the market administrator, of the weighted averages of carlot prices per pound for nonfat dry milk, spray and roller process, respectively, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department, deduct 5.5 cents and multiply by 8.16.

(b) The price per hundredweight computed by multiplying by 8.4 the average of the daily prices paid per pound of cheese at Wisconsin Primary Markets ("Cheddars" f.o.b. Wisconsin assembling points, cars, or truckloads) as reported by the Department for the months and rounding to the nearest cent.

§ 1129.52 Butterfat differential to handlers.

For milk containing more or less than 4 percent butterfat, the class prices pursuant to §§ 1129.50 and 1129.51 shall be increased or decreased, respectively, for each one-tenth of one percent butterfat by the appropriate rate, rounded in each

case to the nearest one-tenth cent, determined as follows:

(a) *Class I milk.* Multiply the Chicago butter price for the preceding month by 0.120.

(b) *Class II milk.* Multiply the Chicago butter price for the current month by 0.110.

§ 1129.53 Location adjustments to handlers.

For that milk which is received from producers at a fluid milk plant located outside of Zone I and classified as Class I milk the price specified in § 1129.50 shall be reduced 1.5 cents for each 10 miles or fraction thereof by the straight line distance as determined by the market administrator that the County Court House of the county in which such plant is located is from the County Court House in New Braunfels, Texas.

§ 1129.54 Use of equivalent prices.

If for any reason a price quotation required by this order for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATION OF PROVISIONS

§ 1129.60 Producer-handlers.

Sections 1129.40 through 1129.46, 1129.50 through 1129.54, 1129.70 through 1129.72, and 1129.90 through 1129.96 shall not apply to a producer-handler.

§ 1129.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to any plant specified in paragraph (a), (b), or (c) of this section except that the operator thereof shall, with respect to total receipts of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(a) An approved distributing plant which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk is disposed of during the month on routes in such other Federal order marketing area than is disposed of on routes (other

(6) The net amount of payment to such producer.

§ 1129.91 Butterfat differential to producers.

The applicable uniform prices to be paid pursuant to § 1129.90 to producers delivering milk to each handler shall be increased or decreased for each one-tenth of one percent which the butterfat content of his milk is above or below 4.0 percent, respectively, at the rate determined by multiplying the Chicago butter price for the month by 0.110.

§ 1129.92 Location differential to producers.

In making payment to producers pursuant to § 1129.90, the uniform price to be paid for producer milk received at a fluid milk plant located outside of Zone I shall be reduced 1.5 cents for each 10 miles or fraction thereof by the straight line distance as determined by the market administrator that the County Court House of the county in which such plant is located is from the County Court House in New Braunfels, Texas.

§ 1129.93 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or verification of weights and butterfat tests of milk or milk products discloses errors resulting in money due a producer or the market administrator from such handler or due such handler from the market administrator, the market administrator shall notify such handler of any amount so due, and payment thereof shall be made on or before the next date for making payments, as set forth in the provisions under which such error occurred.

§ 1129.94 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1129.90, shall deduct 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk.

§ 1129.72 subject to the butterfat differential computed pursuant to § 1129.91 and the location differential computed pursuant to § 1129.92; plus or minus adjustments for errors made in previous payments to such producers; and less (1) payment made pursuant to paragraph (a) of this section; (2) marketing service deductions pursuant to § 1129.94 and (3) proper deductions authorized by such producer;

(c) On or before the 13th and 26th days of each month in lieu of the payments pursuant to paragraphs (a) and (b) of this section, respectively, each handler shall pay to a cooperative association for milk which it caused to be delivered to such handler from producers and for which such cooperative association is not a handler pursuant to § 1129.13, if such cooperative association is authorized to collect such payments for its member-producers and has so requested the handler, an amount equal to the sum of the individual payments otherwise payable to such producers.

(d) On or before the 13th and 26th days of each month, each handler shall pay to a cooperative association for milk which was caused to be delivered to such handler by such cooperative association, and for which such cooperative association is a handler pursuant to § 1129.13 (b), an amount not less than the value of such milk computed by multiplying the pounds of such milk allocated to each class pursuant to § 1129.46 by the applicable class prices including the differentials prescribed by the order.

(e) In making the payments to producers pursuant to paragraphs (b) and (c) or (d) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show for each month:

- (1) The month and the identity of the handler and of the producer;
- (2) The daily and total pounds and the average butterfat content of milk received from such producer;
- (3) The minimum rate or rates at which payment to such producer is required pursuant to this part;
- (4) The rate which is used in making the payment if such rate is other than the applicable rate;
- (5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

§ 1129.71 Computation of aggregate value used to determine uniform prices.

For each month the market administrator shall compute an aggregate value for each handler from which to determine the uniform price(s) per hundredweight for producer milk of 4.0 percent butterfat content as follows:

(a) Add to the amount computed pursuant to § 1129.70 the total value of the location differential pursuant to § 1129.90 (b) or (c);

(b) Add or subtract for each one-tenth percent that the average butterfat content of producer milk received by such handler is less or more, respectively, than 4.0 percent, an amount computed by multiplying such difference by the butterfat differential to producers, as determined pursuant to § 1129.91 and multiplying the result by the total hundredweight of producer milk; and

(c) Add the amount represented by any deductions made for eliminating the fractions of a cent in computing the uniform price(s) for such handler for the preceding month.

§ 1129.72 Computation of uniform prices for handlers.

For each month, the market administrator shall compute a uniform price for producer milk received by each handler as follows:

(a) Divide the aggregate value computed pursuant to § 1129.71 by the total hundredweight of producer milk received by such handler. The result, less any fraction of a cent, shall be known as the uniform price for such handler for milk of 4.0 percent butterfat content, at fluid milk plants in Zone I.

PAYMENTS

§ 1129.90 Payments to producers.

Except as provided in paragraph (d) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

- (a) On or before the 28th day of each month, for milk received during the first 15 days of the month at not less than the Class II price for the preceding month;
- (b) On or before the 15th day after the end of each of the months for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to

than to a distributing plant(s) in the Austin-Waco marketing area.

(b) An approved distributing plant which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk is disposed of during the month on routes (other than to a distributing plant(s)) in the Austin-Waco marketing area than is disposed of on routes in such other Federal order marketing area, but which plant is, nevertheless, fully regulated under such other Federal order.

(c) An approved supply plant which (1) meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, or (2) retains automatic pooling status under another Federal order.

DETERMINATION OF UNIFORM PRICE

§ 1129.70 Net obligation of handlers.

The net obligation of each handler for producer milk received at his fluid milk plant(s) during each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of such milk in each class by the applicable class price and add together the resulting amounts;

(b) Add the amount computed by multiplying the pounds of average deducted from each class pursuant to § 1129.46 (a) (7) and (b) by the applicable class price;

(c) Add an amount computed as follows:

(1) Determine the pounds if any, that the skim milk or butterfat in inventory, subtracted from Class I milk pursuant to § 1129.46 (a) (4) and (b) is not in excess of the pounds in producer milk classified as Class II milk (other than as shrinkage) for the preceding month; and (2) multiply such pounds by the difference between the Class I price in the current month and the Class II price in the preceding month adjusted by the appropriate butterfat differentials;

(d) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months.

for producers who are not receiving such service from a cooperative association:

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers on or before the 13th day after the end of each month and pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

§ 1129.95 Expense of administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 15th day after the end of the month, 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight as the Secretary may prescribe, with respect to all (a) receipts of producer milk, including such handlers' own production; (b) other source milk at a fluid milk plant which is classified as Class I milk; and (c) Class I milk disposed of during the month on routes located in the marketing area from a nonfluid milk plant other than a plant defined in § 1129.61.

§ 1129.96 Termination of obligations.

The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall

be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the milk with respect to which the obligation exists, was received or handled; and
- (3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or wilful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler within the applicable period of time, files pursuant to section 8c(15) (A) of the act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 1129.100 Effective time.

The provisions of this part or any amendment to this part shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 1129.101.

§ 1129.101 Suspension or termination.

The Secretary may suspend or terminate this part or any provisions of this part whenever he finds this part or any provision of this part obstructs or does not tend to effectuate the declared policy of the act. This part shall terminate in any event whenever the provisions of the act authorizing it cease to be in effect.

§ 1129.102 Continuing obligations.

If, upon the suspension or termination of any or all provisions of this part, there are any obligations thereunder, the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 1129.103 Liquidation.

Upon the suspension or termination of the provisions of this part, except this section, the market administrator, or such liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable and exe-

cute and deliver all assignment or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidating and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1129.110 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his Agent or Representative in connection with any of the provisions of this part.

§ 1129.111 Separability of provisions.

If any provision of this part or its application to any person or circumstances is held invalid the application of such provision and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

Effective date: February 1, 1962.

Signed at Washington, D.C., on January 30, 1962.

CHARLES S. MURPHY,

Under Secretary.

[F.R. Doc. 62-1149; Filed, Feb. 2, 1962; 8:46 a.m.]

[Milk Order 132]

PART 1132—MILK IN TEXAS PANHANDLE MARKETING AREA

Order Amending Order

DEFINITIONS	
Sec. 1132.0	Findings and determinations.
MARKET ADMINISTRATOR	
1132.1	Act.
1132.2	Secretary.
1132.3	Department.
1132.4	Person.
1132.5	Cooperative association.
1132.6	Texas Panhandle marketing area.
1132.7	Producer.
1132.8	Distributing plant.
1132.9	Supply plant.
1132.10	Pool plant.
1132.11	Nonpool plant.
1132.12	Handler.
1132.13	Producer-handler.
1132.14	Fluid milk product.
1132.15	Other source milk.
1132.16	Chicago butter price.
1132.17	Base milk.
1132.18	Excess milk.
1132.19	
REPORTS, RECORDS AND FACILITIES	
1132.25	Designation.
1132.26	Powers.
1132.27	Duties.
CLASSIFICATION	
1132.40	Skim milk and butterfat to be classified.
1132.41	Classes of utilization.
1132.42	Shrinkage.
1132.43	Responsibility of handlers and reclassification of milk.
1132.44	Transfers.
1132.45	Computation of the skim milk and butterfat in each class.
1132.46	Allocation of skim milk and butterfat classified.
MINIMUM PRICES	
1132.50	Basic formula price.
1132.51	Class prices.
1132.52	Butterfat differentials to handlers.
1132.53	Location differentials to handlers.
1132.54	Use of equivalent prices.
1132.55	Cheddar cheese credit.
APPLICATION OF PROVISIONS	
1132.60	Producer-handlers.
1132.61	Plants subject to other Federal orders.
1132.62	Handlers operating nonpool plants.
1132.63	Rate of payment on unpriced milk.

U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Texas Panhandle marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and whole-some milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such amount not to exceed 5 cents per hundredweight as the Secretary may prescribe, with respect to butterfat and skim milk contained in (i) producer milk, (ii) other source milk at a pool plant which is allocated to Class I milk, and (iii) Class I milk disposed of in the marketing area (except to a pool plant) from a nonpool plant not subject to the classification and pricing provisions of another Federal order.

(b) *Additional findings.* (1) It is necessary in the public interest to make

this order amending the order effective not later than February 1, 1962. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

(2) The provisions of the said order are known to handlers. The recommended decision of the Assistant Secretary of the United States Department of Agriculture was issued November 29, 1961, and the decision of the Under Secretary containing all amendment provisions of this order, was issued December 27, 1961. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective February 1, 1962, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER. (Sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001-1011.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as herein amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Texas Panhandle marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended as follows:

DEFINITIONS

§ 1132.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 1132.2 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the United States authorized to exercise the powers or to perform the duties of the said Secretary of Agriculture.

§ 1132.3 Department.

"Department" means the United States Department of Agriculture or any other Federal agency authorized to perform the price reporting functions of the United States Department of Agriculture.

§ 1132.4 Person.

"Person" means any individual, partnership, corporation, association, or other business unit.

§ 1132.5 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

- To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and
- To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

§ 1132.6 Texas Panhandle marketing area.

"Texas Panhandle marketing area", hereinafter called the "marketing area", means all of the territory within the counties of Armstrong, Briscoe, Carson, Childress, Collinsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Moore, Oldham, Ochiltree, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler, all in the State of Texas, and Beckham in the State of Oklahoma.

§ 1132.7 Producer.

"Producer" means any person, except a producer-handler, who produces milk in compliance with Grade A inspection

requirements of a duly constituted health authority, which milk is (a) received at a pool plant, or (b) diverted from a pool plant to a nonpool plant for the account of either the operator of the pool plant or a cooperative association (1) any day during the months of March through June and (2) on not more than 15 days during any of the months of July through February: *Provided*, That milk diverted pursuant to this section shall be deemed to have been received at the location of the plant from which diverted.

§ 1132.8 Distributing plant.

"Distributing plant" means a plant which is approved by an appropriate health authority for the processing or packaging of Grade A milk and from which any fluid milk product is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) located in the marketing area.

§ 1132.9 Supply plant.

"Supply plant" means a plant from which milk, skim milk or cream which is acceptable to the appropriate health authority for distribution in the marketing area under a Grade A label is shipped during the month to a pool plant qualified pursuant to § 1132.10(a).

§ 1132.10 Pool plant.

"Pool plant" means:

- A distributing plant from which a volume of Class I milk equal to not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from other plants is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) and not less than 15 percent of such receipts are so disposed of to such outlets in the marketing area: *Provided*, That if a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authorities for the receiving, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.
- A supply plant from which the volume of fluid milk products shipped during the month to pool plants qualified

tributing plant but who receives no milk from other dairy farmers.

§ 1132.14 Producer milk.

"Producer milk" means only that skim milk or butterfat contained in milk (a) received at the pool plant directly from producers, or (b) diverted from a pool plant to a nonpool plant in accordance with the conditions set forth in § 1132.7.

§ 1132.15 Fluid milk product.

"Fluid milk product" means milk (including concentrated milk), skim milk, buttermilk, milk drinks (plain or flavored), cream, or any fluid mixture of cream and milk or skim milk (except storage cream, aerated cream products, eggnog, ice cream mix, evaporated or condensed milk, and sterilized products packaged in hermetically sealed containers): *Provided*, That when any such product is fortified with nonfat milk solids the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of an unfortified product of the same nature and butterfat content.

§ 1132.16 Other source milk.

"Other source milk" means all skim milk and butterfat contained in:

- Receipts during the month in the form of fluid milk products except (1) fluid milk products received from pool plants, or (2) producer milk; and
- Products other than fluid milk products from any source (including those produced at the plant) which are reprocessed or converted to another product in the plant during the month.

§ 1132.17 Chicago butter price.

"Chicago butter price" means the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any range as one price) per pound of 92-score bulk creamery butter at Chicago as reported during the month by the Department.

§ 1132.18 Base milk.

"Base milk" means milk received at a pool plant from a producer during any of the months of March through June which is not in excess of such producer's daily base computed pursuant to § 1132.95

pursuant to paragraph (a) of this section is equal to not less than 50 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided*, That if such shipments are not less than 75 percent of the receipts of Grade A milk at such plant during the immediately preceding period of September through November, such plant may, upon written application to the market administrator on or before March 1 of any year, be designated as a pool plant for the months of March through June of such year: *And provided further*, That if a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

§ 1132.11 Nonpool plant.

"Nonpool plant" means any milk manufacturing, processing or bottling plant other than a pool plant.

§ 1132.12 Handler.

"Handler" means (a) any person in his capacity as the operator of one or more distributing or supply plants, (b) any cooperative association with respect to the milk of producers diverted by the association for its own account from a pool plant to a nonpool plant, or (c) any cooperative association with respect to the milk of its member producers which it causes to be delivered directly from the farm to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association, if the cooperative association notifies the market administrator and the handler to whom the milk is delivered in writing that it wishes to become the handler for such milk. The cooperative association shall be considered the handler for such bulk tank milk, effective the first day of the month following receipt of such notice, and milk so delivered shall be deemed to have been received by the cooperative association at a pool plant at the location of the pool plant to which it is delivered.

§ 1132.13 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a dis-

multiplied by the number of days in such month.

§ 1132.19 Excess milk.

"Excess milk" means milk received at a pool plant from a producer during any of the months of March through June which is in excess of base milk received from such producer during such month, and milk received during such month from a producer for whom no base can be computed pursuant to § 1132.95.

MARKET ADMINISTRATOR

§ 1132.25 Designation.

The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 1132.26 Powers.

The market administrator shall have the following powers with respect to this part:

- (a) To administer its terms and provisions;
- (b) To receive, investigate, and report to the Secretary complaints of violations;
- (c) To make rules and regulations to effectuate its terms and provisions; and
- (d) To recommend amendments to the Secretary.

§ 1132.27 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

- (a) Within 45 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;
- (b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;
- (c) Obtain a bond in a reasonable amount, and with reasonable surety thereon, covering each employee who

handles funds entrusted to the market administrator;

- (d) Pay out of the funds provided by § 1132.88 (1) the cost of his bond and of the bonds of his employees, (2) his own compensation, and (3) all other expenses, except those incurred under § 1132.87, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;
- (e) Keep such books and records as will clearly reflect the transactions provided for in this part, and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;
- (f) Publicly announce, at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 1132.30 and 1132.31, or payments pursuant to §§ 1132.80, 1132.84, 1132.86, 1132.87, and 1132.88;
- (g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be required by the Secretary;
- (h) Verify all reports and payments of each handler by audit of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk or butterfat for such handler depends, or by such investigation as the market administrator deems necessary;
- (i) Prepare and disseminate to the public such statistics and such information as he deems advisable and as do not reveal confidential information;
- (j) Publicly announce on or before:
 - (1) The 5th day of each month, the minimum price for Class I milk, pursuant to § 1132.51(a), and the Class I butterfat differential, pursuant to § 1132.52(a), both for the current month; and the minimum price for Class II milk, pursuant to § 1132.51(b), and the Class II butterfat differential, pursuant to § 1132.52(b), both for the preceding month;
 - (2) The 10th day after the end of the months of July through February the uniform price pursuant to § 1132.72 and the producer butterfat differential pursuant to § 1132.81;

- (3) The 10th day after the end of each of the months of March through June, the uniform prices for base milk and excess milk pursuant to § 1132.73 and the producer butterfat differential pursuant to § 1132.81; and
- (k) On or before the 10th day after the end of each month, report to each cooperative association, which so requests, the percentage of the milk caused to be delivered by the cooperative association or by its members to the pool plant(s) of each handler during the month, which was utilized in each class. For the purpose of this report, the milk so delivered shall be allocated to each class for each handler in the same ratio as all producer milk received by such handler during the month.

REPORTS, RECORDS AND FACILITIES

§ 1132.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler, except a producer handler, shall report for such month to the market administrator in the detail and on forms prescribed by the market administrator:

- (a) The quantities of skim milk and butterfat contained in receipts of producer milk, and the aggregate quantities of base and excess milk;
- (b) The quantities of skim milk and butterfat contained in fluid milk products received from other pool plants;
- (c) The quantities of skim milk and butterfat contained in other source milk;
- (d) The quantities of skim milk and butterfat contained in producer milk diverted to nonpool plants pursuant to § 1132.7;
- (e) Inventories of fluid milk products on hand at the beginning and end of the month; and
- (f) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the disposition of Class I milk outside the marketing area.

§ 1132.31 Other reports.

- (a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.
- (b) Each handler, except a producer-handler, shall report to the market ad-

ministrator in detail and on forms prescribed by the market administrator:

- (1) On or before the 20th day after the end of the month for each of his pool plants his producer payroll for such month which shall show for each producer: (i) His name and address, (ii) the total pounds of milk received from such producer, including, for the months of March through June, the total pounds of base and excess milk, (iii) the number of days, if less than the entire month for which milk was received from such producer, (iv) the average butterfat content of such milk, and (v) the net amount of such handler's payment, together with the price paid and the amount and nature of any deductions;
- (2) On or before the first day other source milk is received in the form of any fluid milk product at his pool plant(s), his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product;
- (3) Prior to his diversion of producer milk to a nonpool plant, his intention to divert such milk, the proposed date or dates of such diversion and the plant to which such milk is to be diverted; and
- (4) Such other information with respect to his utilization of butterfat and skim milk as the market administrator may prescribe.

§ 1132.32 Records and facilities.

Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts and records of his operations, together with such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

- (a) The receipt and utilization of all skim milk and butterfat handled in any form during the month;
- (b) The weights and butterfat and other content of all milk, skim milk, cream and other milk products handled during the month;
- (c) The pounds of skim milk and butterfat contained in or represented by all milk products on hand at the beginning and end of each month; and
- (d) Payments to producers and cooperative associations including the amount and nature of any deductions and the disbursement of money so deducted.

§ 1132.33 Retention of records.

All books and records required under this subpart to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided*, That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records is necessary in connection with a proceeding under section 8c(15) (A) of the act or a court action specified in such notice the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 1132.40 Skim milk and butterfat to be classified.

The skim milk and butterfat which are required to be reported pursuant to § 1132.30 shall be classified each month by the market administrator, pursuant to the provisions of §§ 1132.41 through 1132.46.

§ 1132.41 Classes of utilization.

Subject to the conditions set forth in § 1132.44, the classes of utilization shall be as follows:

- (a) *Class I milk.* Class I milk shall be all skim milk and butterfat (1) disposed of in the form of a fluid milk product (except as provided in paragraph (b) (2) of this section) and (2) not accounted for as Class II milk;
- (b) *Class II milk.* Class II milk shall be all skim milk and butterfat (1) used to produce any product other than a fluid milk product; (2) disposed of and used for livestock feed; (3) contained in inventory of fluid milk products on hand at the end of the month; (4) reflecting the skim milk equivalent of nonfat milk solids used in the fortification of any fluid milk product and not accounted for as Class I milk pursuant to § 1132.41(a) by virtue of the proviso of § 1132.15; and (5) in shrinkage allocated to receipts of producer milk and other source

milk (except milk diverted to a nonpool plant pursuant to § 1132.7) but not in excess of 2 percent of such receipts of skim milk and butterfat, respectively: *Provided*, That with respect to milk for which a cooperative association is the handler pursuant to § 1132.12(c), shrinkage incurred shall be allocated to the cooperative association in an amount not to exceed 0.5 percent of the total receipts of skim milk and butterfat in such milk and the pool plant to which it is delivered for processing shall be allocated shrinkage incurred in an amount not to exceed one and one-half percent of the total pounds of skim milk and butterfat in such milk.

§ 1132.42 Shrinkage.

The market administrator shall allocate shrinkage over a handler's receipts as follows:

- (a) Compute the total shrinkage of skim milk and butterfat for each handler; and
- (b) Prorate the resulting amounts between the receipts of skim milk and butterfat contained in producer milk and in other source milk.

§ 1132.43 Responsibility of handlers and reclassification of milk.

- (a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise;
- (b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

§ 1132.44 Transfers.

Skim milk or butterfat disposed of each month from a pool plant shall be classified:

- (a) As Class I milk if transferred in the form of a fluid milk product to the pool plant of another handler, except a producer-handler, unless utilization as Class II milk is claimed by both handlers in their reports submitted for the month to the market administrator pursuant to § 1132.30: *Provided*, That the skim milk or butterfat so assigned to Class II milk shall be limited to the amount thereof remaining in Class II milk in the plant of the transferee-handler after the subtraction of other source milk pursuant to

§ 1132.46 and any additional amounts of such skim milk or butterfat shall be classified as Class I milk: *And provided further*, That if either or both handlers have received other source milk, the skim milk or butterfat so transferred shall be classified at both plants so as to allocate the greatest possible Class I utilization to the producer milk of both handlers;

- (b) As Class I milk, if transferred to a producer-handler in the form of fluid milk product;
- (c) As Class I milk, if transferred or diverted in the form of a fluid milk product to a nonpool plant located more than 350 miles by the shortest highway distance as determined by the market administrator from the nearest point in the marketing area;

- (d) As Class I milk, if transferred or diverted in the form of a fluid milk product in bulk to a nonpool plant located not more than 350 miles by the shortest highway distance as determined by the market administrator from the nearest point in the marketing area unless:
- (1) The transferring or diverting handler claims classification in Class II milk in his report submitted to the market administrator pursuant to § 1132.30 for the month within which such transaction occurred;
- (2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and
- (3) The skim milk and butterfat in the fluid milk products (except in ungraded cream disposed of for manufacturing uses) disposed of from such nonpool plant do not exceed the receipts of skim milk and butterfat in milk received during the month from dairy farmers who the market administrator determines constitute the regular source of supply for such plant: *Provided*, That any skim milk or butterfat in fluid milk products (except in ungraded cream disposed of for manufacturing uses) disposed of from the nonpool plant which is in excess of receipts from such dairy farmers shall be assigned to the fluid milk products so transferred or diverted and classified as Class I milk: *And provided further*, That if the total skim milk and butterfat in fluid milk products

which were transferred by all handlers to such nonpool plant during the month is less than the skim milk and butterfat classified as Class I milk pursuant to the preceding proviso hereof, the assignment to Class I milk shall be prorated over the claimed Class II classification reported by each such handler on transfers to the nonpool plant.

§ 1132.45 Computation of the skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and for other obvious errors the reports of receipts and utilization for the pool plant(s) of each handler and shall compute the pounds of butterfat and skim milk in Class I milk and Class II milk for such handler: *Provided*, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water reasonably associated with such solids in the form of whole milk.

§ 1132.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1132.45 the market administrator shall determine the classification of producer milk received at the pool plant(s) of each handler each month as follows:

- (a) Skim milk shall be allocated in the following manner:
 - (1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk assigned to producer milk pursuant to § 1132.41(b);
 - (2) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk received in the form of fluid milk products which were not subject to the Class I pricing provisions of an order issued pursuant to the act;
 - (3) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk other than that received in the form of fluid milk products;
 - (4) Whenever the total receipts of producer milk by all handlers are less

prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

§ 1132.55 Cheddar cheese credit.

On and after the effective date hereof through February 1962, any milk used to produce Cheddar cheese or transferred in the form of milk from a pool plant to a nonpool plant and there used to produce Cheddar cheese shall be assigned to such use by the market administrator and shall be subject to a credit computed as follows: Multiply the rate by which the per hundredweight Class II price for milk containing 4.0 percent butterfat exceeds the amount (rounded to the nearest tenth of a cent) obtained by multiplying by 9.0 the average of the daily prices paid per pound of cheese at Wisconsin Primary Markets ("Cheddars" f.o.b. Wisconsin assembling points, cars or truckloads) as reported by the Department during the month, by the hundredweight of Class II milk not in excess of the combined volume of skim milk and butterfat remaining after the computation specified in § 1132.46(a) (7) and the corresponding step of § 1132.46(b) less any overage deducted pursuant to § 1132.46(a) (9) and the corresponding step of § 1132.46(b), which was either used to produce Cheddar cheese or transferred in the form of milk from a pool plant to a nonpool plant and there used to produce Cheddar cheese: *Provided*, That in the event the plant at which the Cheddar cheese was produced also received milk to be classified and priced under some other Federal order(s) on the basis of its specific use in Cheddar cheese and the volume of milk so used in such plant was less than the combined volume of milk to be so classified and priced under this and such other order(s), then the hundredweight of milk to which this paragraph is applicable shall be a pro rata share of such use determined by computing the percentage that the volume of milk for which Cheddar cheese use is claimed under this order is of the total volume of Federal order milk for which such use is claimed and applying that percentage to the volume of milk so used in such plant.

§ 1132.52 Butterfat differentials to handlers.

For milk containing more or less than 4.0 percent butterfat, the class prices for the month calculated pursuant to § 1132.51 shall be increased or decreased, respectively, for each one-tenth percent butterfat at the appropriate rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I price.* Multiply the Chicago butter price for the preceding month by 0.120.

(b) *Class II prices.* Multiply the Chicago butter price for the current month by 0.110.

§ 1132.53 Location differentials to handlers.

For that milk which is received from producers at a pool plant located 100 miles or more from the City Hall, Amarillo, Texas, by the shortest hard-surfaced highway distance, as determined by the market administrator, and which is transferred to a distributing plant which is a pool plant in the form of a fluid milk product and assigned to Class I pursuant to the proviso of this section, or otherwise classified as Class I milk, the price specified in § 1132.51(a) shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

Distance from the Amarillo City Hall (miles):	Rate per hundredweight (cents)
100 but less than 110	15.0
For each additional 10 miles or fraction thereof an additional	1.5

Provided, That for the purpose of calculating such location differential, fluid milk products which are transferred between pool plants shall be assigned to any remainder of Class II milk in the transferee-plant after making the calculations prescribed in § 1132.46(a) (5), and the comparable steps in (b) for such plant, such assignment to transferor plants to be made in sequence according to the location differential applicable at each plant, beginning with the plant having the largest differential.

§ 1132.54 Use of equivalent prices.

If for any reason a price quotation required by this order for computing class

(a) The average of the basic or field prices per hundredweight reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during the month at the following milk plants for which prices have been reported to the market administrator or to the Department, divided by 3.5 and multiplied by 4.0:

Present Operator and Location

Borden Co., Mount Pleasant, Mich.
Carnation Co., Sparta, Mich.
Pet Milk Co., Hudson, Mich.
Pet Milk Co., Wayland, Mich.
Pet Milk Co., Coopersville, Mich.
Borden Co., Orfordville, Wis.
Borden Co., New London, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Oconomowoc, Wis.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Belleville, Wis.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price obtained by adding together the amounts calculated pursuant to subparagraphs (1) and (2) of this paragraph:

(1) Subtract 3 cents from the Chicago butter price and multiply the remainder by 4.8; and

(2) From the simple average as computed by the market administrator of the weighted averages of carlot prices per pound for nonfat dry milk, spray and roller process, respectively, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department, deduct 5.5 cents, and multiply by 8.16.

§ 1132.51 Class prices.

Subject to the provisions of §§ 1132.52 and 1132.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I milk price.* The Class I milk price shall be the basic formula price for the preceding month, plus \$2.15 during the months of July through February and plus \$1.85 during all other months.

(b) *Class II milk price.* For the months of July through February, the price for Class II milk shall be the price computed pursuant to § 1132.50(b), and for the months of March through June, such price less 13 cents.

than 110 percent of Class I sales by all handlers, subtract from the remaining pounds of skim milk in Class II milk an amount equal to such remainder, or the product obtained by multiplying the pounds of skim milk in producer milk by 0.05, whichever is less.

(5) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source received in the form of fluid milk products which are subject to the Class I pricing provisions of another order issued pursuant to the act:

(6) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (4) of this paragraph;

(7) Subtract from the remaining pounds of skim milk in each class the skim milk in fluid milk products received from the pool plants of other handlers according to the classification of such products as determined pursuant to § 1132.44(a);

(8) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk contained in inventory of fluid milk products on hand at the beginning of the month;

(9) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph and if the remaining pounds of skim milk in both classes exceed the pounds of skim milk contained in producer milk, subtract such excess from the remaining pounds of skim milk in series beginning with Class II. Any amount of excess so subtracted shall be called "overage".

(b) Butterfat shall be allocated in accordance with the same procedure prescribed for skim milk in paragraph (a) of this section.

(c) Determine the weighted average butterfat content of producer milk remaining in each class computed pursuant to paragraphs (a) and (b) of this section.

MINIMUM PRICES

§ 1132.50 Basic formula price.

The basic formula price shall be the highest of the prices computed pursuant to paragraphs (a) and (b) of this section, rounded to the nearest cent.

§ 1132.62 Handlers operating nonpool plants.

None of the provisions from §§ 1132.44 through 1132.53, inclusive, or from §§ 1132.70 through 1132.85, inclusive, shall apply in the case of a handler in his capacity as the operator of a nonpool plant, except that such handler shall, on or before the 13th day after the end of each month, pay to the market administrator for deposit into the producer-settlement fund an amount calculated by multiplying the total hundredweight of butterfat and skim milk disposed of as Class I milk from such plant to retail or wholesale outlets (including sales by vendors and plant stores) in the marketing area during the month, by the rate determined pursuant to § 1132.63.

§ 1132.63 Rate of payment on unpriced milk.

The rate of payment per hundredweight to be made by handlers on unpriced other source milk allocated to Class I milk shall be any plus amount calculated as follows:

(a) During the months of March through June, subtract from the Class I price adjusted by the Class I butterfat and location differentials applicable at a pool plant of the same location as the nonpool plant supplying such other source milk, the Class II price adjusted by the Class II butterfat differential; and

(b) During the months of July through February subtract from the Class I price f.o.b. such nonpool plant the uniform price to producers adjusted by the Class I butterfat differential.

DETERMINATION OF UNIFORM PRICES TO PRODUCERS

§ 1132.70 Computation of value of milk for each handler.

The value of producer milk received during each month by each handler shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of milk in each class by the applicable class price and add together the resulting amounts; (b) Add the amounts computed by multiplying the pounds of average deducted from each class pursuant to § 1132.46(a) (9) and the corresponding step of (b) by the applicable class prices;

(c) Add the amount obtained in multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of producer milk classified in Class II less shrinkage during the preceding month, or the hundredweight of milk subtracted from Class I pursuant to § 1132.46(a) (8) and the corresponding step of (b), whichever is less; and

(d) Add an amount calculated by multiplying the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 1132.46(a) (2) and (3) and the corresponding step of (b), by the rate of payment on unpriced milk determined pursuant to § 1132.63 at the nearest nonpool plant(s) from which an equivalent amount of other source skim milk or butterfat was received: *Provided*, That if the source of any such fluid milk product received at a pool plant is not clearly established or if such skim milk and butterfat is received or used in a form other than as a fluid milk product such product shall be considered to have been received from a source at the location of the pool plant where it is classified.

(e) Deduct the amount of any credits computed for such handler pursuant to § 1132.55.

§ 1132.71 Computation of aggregate value used to determine uniform prices.

For each month the market administrator shall compute an aggregate value from which to determine uniform prices per hundredweight for producer milk, of 4.0 percent butterfat content, f.o.b. plants located within 100 miles of the City Hall of Amarillo, Texas, as follows:

(a) Combine into one total the values computed pursuant to § 1132.70 for all handlers who made the reports prescribed in § 1132.30 for such month, except those in default of payments required pursuant to § 1132.84 for the preceding month;

(b) Add or subtract for each one-tenth percent that the average butterfat content of producer milk represented by the values included under paragraph (a) of this section is less or more, respectively, than 4.0 percent, an amount computed by multiplying such differences by the butterfat differential to producers, and

multiplying the result by the total hundredweight of producer milk;

(c) Add an amount equal to the sum of the location differential deductions to be made pursuant to § 1132.82; and

(d) Add an amount equal to one-half of the unobligated cash balance in the producer-settlement fund.

§ 1132.72 Computation of uniform price.

For each of the months of July through February, the market administrator shall compute a uniform price for producer milk of 4.0 percent butterfat content f.o.b. pool plants located within 100 miles of the City Hall of Amarillo, Texas, as follows:

(a) Divide the aggregate value computed pursuant to § 1132.71 by the total hundredweight of producer milk included in such computations; and

(b) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (a) of this section. The resulting figure shall be the uniform price for producer milk.

§ 1132.73 Computation of uniform prices for base milk and excess milk.

For each of the months of March through June, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 4.0 percent butterfat content, f.o.b. pool plants located within 100 miles of the City Hall of Amarillo, Texas, as follows:

(a) From the reports submitted by handlers pursuant to § 1132.30, determine the aggregate classification of producer milk included in the computation of value pursuant to § 1132.71 and the total hundredweight of such milk which is base milk and which is excess milk;

(b) Determine the value of such excess milk on a 4 percent butterfat basis by multiplying the total hundredweight of such milk which is not greater than the total Class II milk pursuant to paragraph (a) of this section by the Class II milk price and by adding thereto the value obtained by multiplying the hundredweight of such excess milk which is greater than the quantity of such Class II milk by the Class I milk price;

(c) Divide the value of excess milk obtained in paragraph (b) of this section by the total hundredweight of such milk, and subtract not less than 4 nor more than 5 cents from the price thus com-

APPLICATION OF PROVISIONS

§ 1132.60 Producer-handlers.

Sections 1132.40 through 1132.46, 1132.50 through 1132.53, 1132.70 through 1132.73, 1132.80 through 1132.88, and 1132.95 through 1132.97 shall not apply to a producer-handler.

§ 1132.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraphs (a) or (b) of this section except that the operator thereof shall, with respect to total receipts of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(a) A distributing plant meeting the requirements of § 1132.10(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk is disposed of during the month on routes in such other Federal order marketing area than was disposed of to retail and wholesale outlets (excluding pool plants) in this marketing area, except that if such plant was subject to all the provisions of this order in the immediately preceding month, it shall continue to be subject to all the provisions of this order until the third consecutive month in which a greater proportion of its Class I disposition is made in such other marketing area unless notwithstanding the provisions of this paragraph it is regulated under such other order.

(b) A distributing plant meeting the requirements of § 1132.10(a) which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which, the Secretary determines, a greater quantity of Class I milk is disposed of during the month to retail and wholesale outlets (excluding pool plants) in this marketing area than is disposed of on routes in such other marketing area but which plant is nevertheless fully regulated under such other Federal order.

§ 1132.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1132.62, 1132.84, and 1132.86, and out of which he shall make all payments pursuant to §§ 1132.85 and 1132.86: *Provided*, That payments due to any handler shall be offset by payments due from such handler.

§ 1132.84 Payments to the producer-settlement fund.

On or before the 12th day after the end of each month each handler shall pay to the market administrator the amount by which the value of milk for such handler, pursuant to § 1132.70, for such month exceeds the obligation, pursuant to § 1132.80, of such handler to producers for milk received during the month.

§ 1132.85 Payments out of the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler, the amount by which the obligation, pursuant to § 1132.80, of such handler to producers for milk received during the month exceeds the value of milk for such handler computed pursuant to § 1132.70. If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section the market administrator shall reduce uniformly per hundredweight such payments as soon as the appropriate funds are available.

§ 1132.86 Adjustment of errors in payment.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 1132.84, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment to any handler, pursuant to § 1132.85, the market administrator shall, within 15 days,

form that it may be retained by the producer, which shall show:

- (1) The month and identity of the handler and of the producer;
- (2) The daily and total pounds and the average butterfat content of milk received from such producer, including for the months of March through June, the pounds of base milk and excess milk;
- (3) The minimum rate or rates at which payment to the producer is required pursuant to the order;
- (4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;
- (5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and
- (6) The net amount of payment to such producer or cooperative association.

§ 1132.81 Butterfat differentials to producers.

The applicable uniform prices to be paid each producer pursuant to § 1132.80 shall be increased or decreased for each one-tenth of one percent which the butterfat content of his milk is above or below 4.0 percent, respectively, at the rate determined by multiplying the total pounds of butterfat in the producer milk allocated to Class I and Class II milk during the month pursuant to § 1132.46 by the respective butterfat differential for each class, dividing the sum of such values by the total pounds of such butterfat, and rounding the resultant figure to the nearest one-tenth of a cent.

§ 1132.82 Location differentials to producers.

In making payment pursuant to § 1132.80 the uniform price pursuant to § 1132.72 and the uniform price for base milk pursuant to § 1132.73 to be paid for milk which is received from producers at a pool plant located 100 miles or more from the City Hall, Amarillo, Texas, by the shortest hard-surfaced highway distance as determined by the market administrator shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

Distance from the Amarillo City Hall (miles):	Rate per hundredweight (cents)
100 but less than 110	15.0
For each additional 10 miles or fraction thereof an additional	1.5

mines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association each handler shall pay for the 13th and 26th days of each month, in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(3) Each handler who receives milk from a cooperative association which collects payments for its members pursuant to subparagraph (1) of this paragraph shall, on or before the 20th of each month, furnish such association information showing the daily and total pounds milk received from each of the association's member producers for the first fifteen days of such month and, on or before the fifth day after the end of each month, such information for the 16th through the end of such month.

(d) In making the payments to producers pursuant to paragraphs (b) and (c) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement in such

puted. The resulting figure shall be the uniform price for excess milk;

(d) Subtract the value of excess milk obtained in paragraph (b) of this section from the aggregate value of all milk obtained in § 1132.71; and

(e) Divide the amount obtained in paragraph (d) of this section by the total hundredweight of base milk obtained in paragraph (a) of this section, and subtract not less than 4 cents nor more than 5 cents from the price thus computed. The resulting figure shall be the uniform price for base milk.

PAYMENTS**§ 1132.80 Time and method of payment for producer milk.**

Except as provided in paragraph (c) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

- (a) On or before the last day of each month, for milk received during the first 15 days of the month, at not less than the Class II price for the preceding month;
- (b) On or before the 15th day after the end of each month, for milk received during such month, an amount computed at not less than the uniform prices per hundredweight pursuant to §§ 1132.72 and 1132.73 subject to the butterfat differential computed pursuant to § 1132.81 plus or minus adjustments for errors made in previous payments to such producer; and less (1) payment made pursuant to paragraph (a) of this section, (2) location differential deductions pursuant to § 1132.82, (3) marketing service deductions pursuant to § 1132.87, and (4) proper deductions authorized by such producer: *Provided*, That if such handler has not received full payment for such month pursuant to § 1132.85 he may reduce uniformly per hundredweight for all producers his payments pursuant to this paragraph by an amount not in excess of the per hundredweight reduction in payment from the market administrator. The handler shall make such balance of payment to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payment is received from the market administrator;

(c) (1) Upon receipt of a written request from a cooperative association which the market administrator deter-

make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1132.80, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

§ 1132.87 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1132.80(b), shall deduct 6 cents per hundredweight or such lesser amounts as the Secretary may prescribe, with respect to all milk received by such handler from such producer (except such handler's own farm production), during the month, and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of milk received by handlers from such producers during the month and to provide such producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) Producers' cooperative associations: In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

§ 1132.88 Expense of administration.

As his pro rata share of the expense of the administration of the order, each handler shall pay to the market administrator, on or before the 15th day after the end of each month, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to butterfat and skim milk contained in (a) producer milk, (b) other source milk

administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or wilful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler within the applicable period of time, files pursuant to section 8c(15)(A) of the act, a petition claiming such money.

DETERMINATION OF BASE

§ 1132.95 Daily base.

The daily base for each producer shall be the amount obtained by dividing the total pounds of producer milk received from such producer by all handlers during the months of September through December immediately preceding, by the number of days from the first day of delivery by such producer during such months to the last day of December inclusive, less the number of days for which no deliveries are made, but not less than 112 days.

§ 1132.96 Base rules.

The following rules shall apply in connection with the establishment of bases:

(a) A base shall apply to deliveries of milk by the producer for whose account that milk was delivered during the months of September through December:

(b) An entire base shall be transferred from a person holding such base to any other person effective as of the first day of any month following receipt by the market administrator of an application for such transfer. Such application shall be on a form approved by the market administrator and shall be signed by the baseholder and by the person to whom such base is to be transferred. *Provided*, That if a base is held jointly, the entire base shall be transferable only upon receipt of such application signed by all joint holders.

§ 1132.97 Announcement of established bases.

On or before February 15 of each year the market administrator shall notify each producer and the handler receiving milk from such producer of the daily base established by such producer.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 1132.100 Effective time.

The provisions of this part, or any amendments to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 1132.101 Suspension or termination.

The Secretary shall suspend or terminate any or all of the provisions of this part, whenever he finds that it obstructs or does not tend to effectuate the declared policy of the act. This part shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

§ 1132.102 Continuing power and duty of the market administrator.

(a) If, upon the suspension or termination of any or all of the provisions of this part, there are any obligations arising hereunder, the final accrual or ascertainment or which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination. *Provided*, That any such acts required to be performed by the market administrator shall if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

(b) The market administrator, or such other person as the Secretary may designate shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all funds or property on hand together with the books and records of the market administrator, or such person, to such person as the Secretary shall direct; and (3) if so directed by the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant thereto.

§ 1132.103 Liquidation after suspension or termination.

Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under this control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above

the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1132.110 Separability of provisions.

If any provision of this part, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

§ 1132.111 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

Effective date: February 1, 1962.

Signed at Washington, D.C., January 30, 1962.

CHARLES S. MURPHY,
Under Secretary.

[F.R. Doc. 62-1151; Filed, Feb. 2, 1962;
8:46 a.m.]